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THE
GAZETTE SERIES.

EDITED BY

HENRY B. DAWSON.

VOL. III.



RONKERS, N. Y.

1866.

TWENTY-SIX COPIES PRINTED,
FOR PRIVATE CIRCULATION ONLY.

No. 23 ~

Henry B. Dawson

TO
S. ALOFSEN, Esq.,

TREASURER OF THE NEW JERSEY HISTORICAL SOCIETY,

Jersey City, N. J.,

Recognizing his zeal in promoting the cause of his-
torical inquiry and honoring his
worth as a man,

THIS VOLUME IS INSCRIBED,

BY HIS FRIEND,

THE EDITOR.

Morrisania, N. Y., 1866.

ADVERTISEMENT.

The following Papers, concerning the Boundary between the States of New York and New Jersey, appeared, originally, in the columns of *THE GAZETTE*, a weekly newspaper published at Yonkers, Westchester County, N. Y., under my editorial management.

The great importance of the subject on which they treat, and the ability with which their authors have discussed it, have secured for these papers, already, the earnest attention of students and of prominent officers of the State, and their influence has been seen in more than one direction : for the gratification of a few personal friends, twenty-six copies have been re-produced in this more permanent form.

HENRY B. DAWSON.

Morrisania, N. Y., 1866.

P A P E R S

CONCERNING

THE BOUNDARY

BETWEEN THE STATES OF

NEW YORK AND NEW JERSEY,

WRITTEN BY

SEVERAL HANDS.



YONKERS, N. Y.

1866.

I.

THE NEW JERSEY BOUNDARY.

BY

GENERAL JOHN COCHRANE,

Attorney-General of the State of New York.

READ BEFORE THE NEW YORK HISTORICAL SOCIETY,
JUNE 6TH, 1865.

NEW-YORK HISTORICAL SOCIETY.

At a stated meeting of the Society, held in its Hall, on Tuesday evening, June 6th, 1865,

The paper of the evening was read by Gen. John Cochran, Attorney General of the State of New York, its subject being :—" That the waters between Staten Island and New Jersey, viz., the Kills, the Sound, and Raritan Bay. are not, nor ever were, New Jersey waters, but always have been and are parts of Hudson River, and the waters of New York."

On its conclusion. Mr. Charles P. Kirkland submitted the following resolution :

Resolved, That the thanks of the Society be presented to General Cochrane for his highly interesting and instructive paper read this evening ; and that a copy be requested for the archives of the Society.

After some remarks by Mr. John Romeyn Brodhead, the resolution was adopted unanimously.

Extract from the minutes.

ANDREW WARREN,

Recording Secretary.

GEN. COCHRANE'S PAPER.

MR. PRESIDENT :

A litigation, conducted by the State of New Jersey, in the Courts of the United States, directed to the water-boundary between her and the State of New York, has been to me, in my official capacity, the occasion of extended research among the records of the earliest colonial periods. The results of these labors, I am inclined to believe, will not be destitute of interest to the general mind, and, although produced by proofs within the knowledge of the historian, yet, so little understood are they, that I venture to communicate them to the Historical Society of the State of New York.

The efforts of New Jersey to neutralize the commercial advantages of New York and to promote her own aggrandizement are notorious. Few, however, are cognizant of their original recklessness and the persistence of their subsequent prosecution.

It will be remembered that the Patent of Charles II. to James, Duke of York, of the 29th June, 1674, conveyed to him the

proprietary and jurisdictional right to the whole country from Connecticut River to the Capes of the Delaware, &c.

Exactly one month thereafter, James, Duke of York, enfeoffed Lord Berkeley and Sir George Carteret of all that land thereafter to be called Nova Cæsarea, or New Jersey, "adjacent to New England, and lying and being westward of Long Island, and bounded on the east part by the Main Sea and part by Hudson's River from a point in 41 degrees latitude." The two primary patents of March 12th, 1664, and June 24th, 1664, between the same parties, expressed these same boundaries.

It is here, then, to be remarked, that the Patented New Jersey was thus originally limited, on the eastern border, by the western shore of Hudson's River and by the Main Sea. No vicissitude of conflicting events, nor fluctuation of royal caprice, ever disturbed these bounds. They withstood both the attritions of individual exasperation and the casualties of national change, till an act of our own deliberation, in 1833, prepared a Treaty, which, by its subsequent ratification, receded them, easterly, from the westerly margin, to the middle of the Hudson. In the interval, however, of a century and a half, the avaricious desires of New Jersey had not lain torpid. Carved surreptitiously from the side of New York, under the opiates of one, Captain John Scott, artfully discharged upon the drowsed

senses of James, Duke of York, from the hour of her separation to the present, she has formed her national life to the rugged career of incessant competition with her parent State.

No one, however, familiar with the history of the past, will entertain as singular, this conduct of New Jersey. She has had successful imitators in Connecticut, Massachusetts, and New Hampshire; and, if something has been shorn from the lusty proportions of the primitive New York, the conduct of these "Pelican daughters" has neither abated her strength, nor irritated her sedate consciousness of superior power.

The earliest recorded evidence that I have discovered, disposes the initiation of New Jersey's enterprising encroachments, systematised under the Patent of 1674, at the year 1681.

The proprietors of East New Jersey had projected Perth Amboy, then the capital of the Province, to be a port of entry. Efforts, though of adverse event, had previously directed merchandise to that place. The port of New York still, however, maintained its exclusive control of trade, and repressed all attempts to rival and impair its commerce. It was then, on the 28th of March, 1681, that the Lady Elizabeth Carteret, survivor of Sir George, one of the original Patentees, wrote to Secretary Bollen to present a claim to Staten Island; and thereupon, in the language of cotemporaneous history,

“ the people of East New Jersey pretended a right to the River, so far as the Province extends, which is 18 miles up the River to the northward of this Place.” (*Manhattans.*)

Quakers, in considerable numbers, had settled in East New Jersey. Their desires, habitually chastened and restrained, seem now, to have been inflamed by the prospect of goodly gain ; and the annals of the times declare them to have been “ especially vigorous with their pretensions “ to Staten Island.”

We are here necessarily reminded that Staten Island, from the period of the cession of the entirety of New Netherland, by the Dutch, to Charles II., by the Treaty solemnized at Westminster, on the 19th February, 1674, had been possessed and occupied under the authority of the Crown. The Patent of his Charles to brother James, Duke of York, had transferred to him, on the 29th of June following, this right of possession and occupation, included in the general grant ; and the Duke, even after his Patent to Berkeley and Carteret, of New Jersey, continued to possess Staten Island, as part of his Province of New York, and that undisputed, until the interposed claim of the Lady Elizabeth Carteret, in 1681.

It will be readily understood, that as long as the water-boundary between New York and New Jersey, described by the Patent on the western shore of the Hudson's River and the Main Sea, should be conceded to embrace Staten

Island within the limits of New York, the waters which separated that island from New Jersey would be authentically ascertained the waters of Hudson's River. But, such a concession would have fatally terminated the pretensions of Perth Amboy to the capacity of a Port of Entry, by removing her virtually from the sea. Therefore the claims upon the Island and to the waters which surround it, being concurrently necessary for the purposes of New Jersey, for the first time since the discovery in 1609 were they formally announced in 1681, as the basis of that controversy with New York, which, with various events, has survived even to our day. The reflection is here apposite, that the right of property in, and of jurisdiction over, Staten Island, being essential to the maintainance by New Jersey, of her right to the waters which flow about the Island. through the Kills, to the sea ; by the authority of that right also, would the waters of Hudson's River, in their progress to the sea, be restrained to the single passage at the Narrows. But the demonstration that the waters of the Hudson, in their seaward current, debouch through both the Narrows and the Kills, would not only have exposed the futility of New Jersey's pretensions to Staten Island, but have effectually disposed of her commercial rivalry with New York.

Unquestionably, the proximity of the times which witnessed the Lady Elizabeth's preposterous claim, to these earlier days, the history of

which abounds with its triumphant refutation, accounts for the dormant interval of more than a century, before its resuscitation in 1806. Then recommenced, under the sanction of legislative authority, the active prosecution by New Jersey, of her claims to the waters of the Hudson and to Staten Island. New York resisted. The Courts were resorted to; the acts of chicane prevailed and the Courts were abandoned. Commissions were created. The Commissioners convened and failed. At length, in 1833, a final effort proceeded from New York. It was reciprocated by New Jersey; and an agreement was the result, which, under the action of subsequent Legislative ratification, ultimately, in 1834, assumed the solemnity of a Treaty. Its first Article comprehending all of its provisions necessary to the purpose of this paper, I content myself with quoting it alone:

*“Article First—*The boundary line between
“the two States of New York and New Jersey, from a point in the middle of Hudson
“River opposite the point on the west shore
“thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked,
“to the main sea, shall be the middle of the
“said river, of the bay of New York, of the
“waters between Staten Island and New Jersey
“and of Raritan Bay to the main sea, except as
“hereinafter otherwise particularly mentioned.”

It is not to be suspected that either B. F. Butler, or Peter Augustus Jay, or Henry Seymour

could, on the part of New York, which, as a party to the agreement they represented, have trafficked the interests of the State, or have compromised them, by relinquishing to New Jersey a moiety of the unquestioned rights of New York.

Evidently their impression, that the Hudson communicated with the ocean only through its single mouth at the Narrows, founded such serious doubts of the tenability of New York's right to the entire waters of the Kills, outward to the ocean, as induced the relinquishment of a portion of them, in consideration of the secure enjoyment of the remainder, and of Staten Island and other smaller islands within them. Recourse to the arguments submitted on this subject, on behalf of this State, and recorded at various times within the present century, amply confirms this supposition. In these, it is unequivocally admitted that the water-boundary between the two States pursues its southerly course along the western shore of the Hudson, across the Kills to the easterly shore of Staten Island, and thence, directly over the intervening waters, to Sandy Hook. Nevertheless, the unblenched truth remains, that the Treaty which parted with whatever portion of these waters, inconsiderately sacrificed some of the best interests of the State.

This ill advised compromise has also produced its legitimate fruits. It will have been observed that the line which distinguishes the boundary of

the coincident States, proceeds through the centre of the waters of the Hudson, of the Bay of New York, of the waters between Staten Island and New Jersey, and of Raritan Bay to the main sea. Although it admits of no reasonable dispute, that the main sea is conterminous with a line drawn from Prince's Bay Light House, on Staten Island, to the mouth of Matteawan Creek, in New Jersey, and restrains, at that point, the disintegrating force of the Treaty, some miles to the westward of Sandy Hook, yet, the State of New Jersey, contending that the main sea flows only without Sandy Hook, asserts, by an extension thereto of the central dividing boundary line, her right to the southerly one half of the Lower Bay of New York, inclusive of a substantive section of the ship channel to the Harbor of New York.

The determination of this claim of right has already received juridicial judgment; and will, doubtless, require the ultimate decision of the Supreme Court of the United States. Should it be repressed, as there is no good reason to doubt that it will be, an important enquiry would ensue into the rights of New York in the Lower Bay, from the mouth of Matteawan Creek to Sandy Hook. Having originally been within the jurisdiction of James, Duke of York, if never conveyed by him, as part of New Jersey, to Carteret and Berkeley, evidently it would still enure to New York. Besides, therefore, the

service rendered to geographical verity by a collocation of the authorities which attribute the waters which surround Staten Island, exclusively to Hudson's River, the establishment of the fact is essential to the validity of the tenure by which New York shall, in the future, retain possession of her ship channel.

Through this prefatory narrative, therefore, have I, at length, attained the subject to which your attention is invited, but which will, perhaps, be the better adjusted to the historical evidence hereafter adduced, if submitted in the form of a proposition. Accordingly I propound that THE WATERS BETWEEN STATEN ISLAND AND NEW JERSEY, THE KILL VAN COLL, THE SOUND AND RARITAN BAY, OR BY WHATEVER OTHER BAPTISMAL NAMES THEY OR THEIR PARTS MAY HAVE BEEN, OR ARE NOW DESIGNATED, TOGETHER WITH ALL THE WATERS WHICH LAKE STATEN ISLAND SHORES, WERE, FROM THE PERIOD OF THEIR DISCOVERY, KNOWN AND ACCEPTED, AND SHOULD PROPERLY NOW BE CONSIDERED, THE WATERS OF HUDSON'S RIVER.

When Hudson, carefully consulting his soundings, "went in past Sandy Hook" on the evening of the 3rd of September, 1609, he moored the *Half Moon* in "The Bay." A boat's crew proceeding upward to the north, on a subsequent day, (September 6th,) we are told that they passed through the Narrows, into a commodious harbor, "with very good riding for Ships." In their further progress northward, they discovered

the Kills in "a narrow riuer to the Westward
 "betweene two Ilands." The exploration of this
 river disclosed to them "an open Sea," now
 called Newark Bay. When the *Half Moon* first
 left her anchorage in "The Bay," (September
 11,) Hudson cautiously passed through the Nar-
 rows, "went into the Riuer," and again found
 moorage near the mouth of the Kills, in "a very
 "good Harbour for all windes."

This simple statement of Hudson's discovery,
 purges effectually the clouded medium of subse-
 quently distorted narrative; and our neutral vision
 has direct access to "the bay," the "harbor," the
 "western river," and "the open sea," unperturb-
 ed into unnatural lineaments by the false names
 imposed by accumulating ignorance or design;
 and representing them as they lay, and as un-
 changed they lie, in physical aspect, the only dis-
 tinguishable "bay" below, the "narrow straits"
 above, the estuary, roadstead, or "harbor" within,
 the "river" conducting the upper waters to
 the west, and beyond that, the "open sea" in the
 distance. If now we apply to this fluvial system,
 the nomenclature adapted to it by the proper
 names since borne by the river which originated
 it and the ports on its banks, "the bay" be-
 comes the Great Bay of the North River; "the
 "Harbour," the Harbor or Port of New York;
 and "the narrow river to the westward" and "the
 "Narrows" at the south, the mouths through
 which the waters of the Hudson discharge them-
 selves through the Great Bay into the main sea.

Here, then, is probably the most fitting place for the remark, that the confirmation of this hypothesis will be the explosion of the injurious theory upon which the Treaty of 1834 ceded to New Jersey one half of the rights of New York to the waters of the Hudson, and of those which separate Staten Island from New Jersey, together with the lands under them, upon the very common error of mistaking the harbor of New York for the bay of New York, and of imposing the name of Raritan Bay on a portion of the waters of the Great Bay of the North River.

I proceed now to the proofs that apply to the hypothesis.

At page 366 of the first volume of Brodhead's *Colonial Documents*, and at pages 19 and 22 of the fourth volume of O'Callaghan's *Documentary History of New York*, will be found a fragment, entitled, "Information relative to taking up of land in New Netherland. By Cornelis van Tienhoven, Secretary of the Province. Translated from the Dutch. 1650." I extract from it, the following passage: "*In the Bay of the North River*, about two miles from Sandy Hook, lies an inlet or small bay. On the south shore of said bay, called Neyswesinck there are right good maize lands."

Says Brodhead, (*History of New York*, i, 525): "The patroon (*Melyss*) now went (*August 5, 1650*) to his colonie at Staten Island, "for the greater security' of which, Van Dinck-

“lagen had just before purchased from the Raritan, for Van de Capellan, the lands ‘at the south side, in the Bay of the North River.’”

Staten Island having in 1630, and while New Netherland was held by the Dutch, been ceded by the Indian owners to Michael Pauw, and by him reduced to possession, Gov. Lovelace, after the English conquest, and on the 13th April, 1670, purchased the same, for the Duke of York, from the Sachems and proprietors of the island (*Book of Patents,—Off. Sec. State,—iv, 62.*) The Patent is from Aguepo, Wanenes, Mingua, and others, true Sachems, &c., proprietors of Staten Island, and grants “all that island lying “and being in *Hudson’s River*, commonly called “Staten Island, and by the Indians, Aquehonga “Manackuong, having on the south, *the Bay* and “Sandy Point; on the north, *the river* and the “city of New-York, on Manhattan Island; on the “east, Long Island; and on the west, the main “land of After Coll or New Jersey.”

At page 661 of Leaming & Spicer’s *Collection*, will be found the Monmouth Patent, issued by Governor Nicholls, April 8th, 1665, to Goulding, Spicer, Gibbons, and others. It was extinguished by the Dutch conquest of 1673; but, was subsequently, on the 9th of November, 1674, revived by Governor Andros. In both 1665 and 1674, the boundary of the Patent ran “from “Sandy Hook, *along the Bay*, to land across the “mouth of Raritan River,” &c.

A description of New Netherland, translated from *De Nieuwe en Onbekende Weereld*, &c., door Arnoldas Montanus, (Amsterdam, 1671,) appears on pages 73 and 76 of the fourth volume of O'Callaghan's *Documentary Hist. of New York*, wherein this passage occurs: "Adriaen Blok and Godyn soon discovered here divers coasts, islands, harbours, and rivers. Among the rivers is the Manhattans or Great River, by far the most important, which disembogues into the Ocean by *two wide mouths, washing* the mighty island of Matouwacs. The south entrance was called *Port May or Godyn's Bay*: Midway lies Staten Island, and a little further up, the Manhattans, so called from the people which inhabit the mainland on the east side of the river."

Governor Dongan, when writing to the Lord President of the Council, 22d February, 1686, says. (Whitehead's *East Jersey under Proprietary Governments*, i, 218.) "We in this Government, look upon that Bay that runs into the sea at Sandy Hook, *to be Hudson River*."

The proprietors of East New Jersey having petitioned the King to make Perth Amboy a Port of Entry, by an order in Council, dated October 25th, 1697, the same was referred to the Board of Trade for their opinion thereon. Subsequently, and on the 25th of November of that same year, the opinion of the Board of Trade

having been laid before the King in Council, his Majesty approved the same, and thereupon was pleased to dismiss the petition of the proprietors of East New Jersey. Among the reasons assigned by the Board of Trade adverse to the prayer of the petitioners, and which reasons were approved by the King in Council, at the Court at Kensington, are these, viz.: "That at the separation of
 "the Jerseys from the Province of New Yorke,
 "the citty of New York was the Common port for
 "both. That it is in no place that we know of,
 "either in England or elsewhere, usuall, to have
 "two ports independent on each other in one and
 "the same River or within the same capes or
 "outlet into the sea: such a practice being
 "manifestly liable to great inconveniences. *That*
"Perth Amboy lies on one side of the mouth of the
"same river which runs by the citty of New York
"(that river being divided by an Isld called Staten
"Island,) and is within the same capes." (*New York Colonial Manuscripts*, xli., 135.)

On the 7th day of December, 1700, Lord Bello-mont, then Governor of New York, ordered Col. Romer "to measure the distance across the Nar-rows, and to sound the depth of water there, as
 "well as in a second arm of Hudson's River called
 "the Coll, between Staten island and East
 "Jersey, and to ascertain whether any ships and
 "hombketches could come around by Amboy and
 "consequently attack the city of N. York.

"Item, to select a couple of places both at the
 "Narrows and the Coll, where suitable fortifica-

"tions could be erected and the enemy be there-
 "by forestalled in his undertakings." On the
 13th day of January, 1701, Colonel Romer, after
 reporting the accomplishment of his Instructions
 respecting the Narrows, proceeds: "In regard
 "to the other branch of the *Hudsons river*
 "called the *Coll*, between *Staten Island* and
 "*East Jersey*, I have sounded it from Amboy
 "to Tampsons point and Elizabeth town, and find
 "from Amboy to the abovenamed points, 8, 7, 6,
 "5, and 4 fathoms of water," &c., &c., (*Colonial*
Documents, iv., 836, 837.)

Impregnable as is the uniform tenor of record
 evidence, it is confirmed by the testimony of
 ancient maps.

The earliest map of New Netherland, which
 has been preserved to our times, is the cele-
 brated "*Carte Figurative*" which was annexed
 to the memorial presented to the States
 General, on the 18th of August, 1616, by the
 "Bewindhebbers van Nieuw Nederlandt,
 "praying for a special Octroy," &c. It was dis-
 covered at the Hague in 1841, by the energetic
 and capable historian of our State, Hon. J.
 Romeyn Brodhead, and a fac-simile thereof is
 to be found in the *Colonial Documents of New*
York, i, 13. However imperfect the delineations,
 this map represents unmistakably the
 River Mauritius (now Hudson) as it washes
 the margin of Manhates Island, and, enlarging
 thence its course to the ocean, swells into an

expansive Bay, which encloses Staten Island, and ultimately passes at "Sand punt," into the main sea.

Nicholas Visscher's map of *New Belgium, New England, and also a part of Virginia*, first published in 1656, and periodically issued, from time to time, till 1682, may be seen at the State Hall, in Albany. On this map, no name is given to any other river than the Veische (Fresh or Connecticut) and Maquas (Mohawk) rivers. The course of other rivers, however, (the Hudson, Raritan, &c.,) is described. The waters south of Staten Island are named thereon "Port May of Godyn's Bay." This having been the Dutch method of expressing an alias, it is construable as Port May or Godyn's Bay, in conjunctive honor of May, one of the earliest Dutch navigators, and of Godyn, one of the most ancient of the New Netherland patroons.

Whitehead, in his *East Jersey under Proprietary Governments*, prefixes to the title page of the volume (Edition of 1846) a copy of A. van der Donck's map of 1656. Neither the Hudson River, nor the Kills, nor Newark, nor Raritan, nor New York Bays are nominally inscribed upon it. But the entire waters adjacent to Staten Island on the southerly side, are denominated Port May or Godyn's Bay, and Sandy Hook rejoices in the appellation of Sant-Punt or Godyn's-Punt.

In the same volume, coincident with page 88, Mr. Whitehead furnishes the copy of a map of

the settled portion of New Jersey, projected and described in the year 1682. It confines the name of Raritan to the river now known as such, but represents none for the waters from its mouth to Sandy Hook. It is inscribed with this note : "The great Grant from Gov. Nicholls extended "from Sandy Point, up the Raritan some distance and twelve miles to the Southward. "1665." As will be recollected, this grant, herein before cited as "The Monmouth Patent," bearing the date of 1665, was bounded "from "Sandy Hook, *along* the Bay, to and across the "mouth of the Raritan River," &c. The map of 1682 thus singularly concurs with the Patent of 1665, in protecting "the Bay" from the infectious waters of the Raritan.

On Cadwallader Colden's map of the Hudson and Mohawk Rivers, in 1719, no name appears for the waters that surround Staten Island, though the Raritan River is named.

Brodhead's *Hist. of the State of N. Y.* furnishes a prefatory map of New Netherland, according to the charters granted by the States General, on the 11th October, 1614, and 3rd June, 1621. I can refer to no higher or more reliable authority than the solemn judgment, deliberately expressed, of this distinguished author ; nor can I more appropriately close this series of citations than with that imprinted with the recommendation and assurance of his superior caution and diligence. This map inscribes the waters at their

length, which lave Staten Island on the north-west, with the name of the Kill van Kol ; those washing it on the south are denominated Port May and Coenraet's Bay; while Sandy Hook presents the names of Colman's Point, Godyn's Point, and Sand Hoeck, in exemplification of the periodical nomenclature of the varying times.

From the *Calender of Land Papers* at Albany, may be collected indisputable proof that the right to, and the jurisdiction over, the waters by which Staten Island is surrounded, were ascribed to the province of New York.

In volume xii., page 18, occurs the Petition of Adoniah Schregler, in 1736, to the Colonial Council, praying a Patent for a ferry from the nearest part of Staten Island (right across the meadows) to Elizabeth Town Point in East New Jersey ; and in volume xiv., page 82, under date of September 15, 1750, is entered the Petition of Jacob Corson, praying a Patent for a ferry between his land and Staten Island, and the shore of Bergen in East New Jersey.

Error has been charged to the Commissioners of the Treaty of 1834, in having mistaken the harbor of New York for the bay of New York. The designation of the waters of the Hudson within the harbor, as the Bay of New York, and the application of Raritan Bay to those beyond the Kills, are the inherent errors which the Treaty furnishes, as will now be shown, of this mistaken view of the Commissioners.

It has been, I think, satisfactorily proved that what is now erroneously, though popularly, termed the Lower Bay, is the true Bay of New York. Still, evidence may be multiplied till the truth becomes conspicuous, that the baptism of "the Bay" never was conferred on any other portion of the waters of the Hudson, till the habitual corruptions of the vulgar tongue enticed and betrayed an intelligent community into the injurious conversion of a roadstead or estuary of the sea into the Upper Bay of New York.

When Michael Pauw, on the 22nd of November, 1630, purchased "Ahasimus," now called "Horsimus," and "Arusick," they were described as "extending *along the river Mauritius* (Hudson) and Island of Manhattan, on the east side; "and the island of Hoboken Hacking, on the north side; and surrounded by marshes, sufficiently for district boundaries." As his purchase, including the whole neighborhood of Paulus Hook or Jersey City, was bounded on the east *by the river*, it is evident that, in 1630, no "Bay" had yet made a northerly progress to that point.

I have come now, at last, in the chronological procession of historical facts, to the consideration of the not inconsiderable part, which the perverted sense entertained of the phrase, "Achter Cull," has enacted in this chapter of errors.

The word *Coll* is Dutch, and signifies a bay. The knowledge of the name having been accessible

to all participants in the usual fund of information, the common theme of every neighborhood, at all times, it was inconsiderately applied to those waters most immediately visible, whose body did not derogate from the popular idea of the dignity of a Bay. We have seen that the port or harbor of New York was the victim of the delusion; and "Achter Cull," the early designation of Newark Bay, was readily and naturally rendered into the "After Bay" of the English, relatively to its position behind the upper Bay of New York. But the term "Achter," or *After*, was predicated only of localities in the interior and *behind those bordering the sea coast*: and, while redressing the prevailing error which, generally, has referred the signification of the *Dutch Kills* to their relation to either Newark Bay or to an upper Bay of New York, if the uninterrupted current of authority attributes, as we have seen that it does, the "Kill van Cull," or "the River of the Bay," to that mouth of the Hudson which, through the Kills, discharges its waters into "The Great Bay," then will we have no difficulty in determining that the "Achter Cull" was named from its position "behind" the same "Great Bay."

Indeed, so important an object in the landscape of the early New Netherland was "The Bay," and so grateful to our adventurous ancestors were its geographical magnificence and commercial prominence, that not only the

inland waters of Newark Bay but also the Hackensack country, and even the wide spread New Jersey, were known only, with reference to it, as the land of "Achter Coll." In the *Journal of New Netherland* within the years 1641, '42, '43, '44 '45 and '46 (*Colonial Documents*, i., 179-183), Hackingsack is spoken of as "Achter Coll;" and at a meeting of the Honorable Council of War, holden in Fort Willem Hendrick, on the 18th of August, 1673 (*Colonial Documents*, ii., 576). deputies are recorded to have come into Court, from the towns of Woodbridge, Schroasburg and Middletown, situate at *Achter Coll*; while Captain John Berry, William Sandfort, Samuel Edsall and Laurens Andriessen appearing before the Council, "requested such "privileges as were granted and accorded to all "other, the inhabitants of *Achter Coll*, lately "called New Jersey."

It will also be remembered, that the Patent, April 13th, 1670, from the true Sachems and proprietors of Staten Island to Governor Lovelace, herein before quoted, bounds the island "on the west, by the main land of "*Achter Coll*, or New Jersey." While thus not only Newark Bay, but Hackensack and all New Jersey reposed in the solemn shade of the Great Bay, how probable it is, that still another Bay in the upper Hudson's River, would have also been pronounced an Achter Coll? That it was not, is an authentic denial of the supposed existence of any such bay.

I have now concluded the detail of the earlier historical evidence, which directs unequivocally to the conclusion, that the Hudson River empties itself, through its two mouths, the Narrows and the Kills, into the Bay of New York, which flows past Sandy Hook into the sea. The introduction of two additional authorities, however, is requisite, not only to the symmetry, but to the completeness of the proof.

The one is that of a name of diffused reputation, everywhere held in reverential observance. I mean the name of Judge Egbert Benson; and I cite from his *Memoir*, at page 93: "The Dutch called the Bay, bounded "on the south by the Ocean, on the east by "Long Island, on the north partly by the "mouth of the Hudson and partly by the shore "of New Jersey, and on the west wholly by the "shore of New Jersey, and, Staten Island considered as lying within it, '*The Great Bay of New* " '*Netherland*,' and so-called, as van der Donck "expresses it, *propter Excellentiam*, eminently *the* " *Bay*. Newark Bay, from its relative situation "to the *Great Bay*, they called *Het achter Cull* "literally, the *Back Bay*; *Cul*, borrowed from the "French *Cul de sac*, and also in use with the Dutch "to signify a Bay. *Achter Cul*, found in very "early writings in English, referring to it, corrupted to *Arthur Cull's Bay*; the passage from "it into the *Great Bay*, they called *Het Kill van* " *het Cul*, the Kill of the Cul, finally come to be "expressed by 'the Kills.'"

The other authority is that of the historiographer of our State. " 'Achter Cul' or 'Achter Kol' now called 'Newark Bay,' was so named by the Dutch because it was 'achter' or *behind* the *Great Bay of the North River*. The passage to the *Great Bay* was known as the 'Kil van Cul,' from which has been derived the present name of the 'Kills.' The English soon corrupted the phrase into Arthur Cull's Bay. (Brodhead's *History of New York*, i, page 313, note)

I may now, I trust, be permitted to think that the proposition submitted, that all the waters which surround Staten Island are the waters of the Hudson River, stands substantiated by abundant proof. To be sure, they receive important contributions from Newark Bay and from the Rahway and Raritan Rivers of New Jersey. I do not contend that they drain the same basin through which the Hudson and its tributaries pass, nor, that their systems are the same. Still, have these rivers no more efficacy in the creation of Bays by the discharge of their affluence into the Hudson and the Great Bay at its mouth, than has been attributed to the York, or the Rappahannock, or the James Rivers, of cutting, at their mouths, from the Chesapeake Bay, subsidiary Bays of their own. The affix of Raritan Bay, therefore, to any portion of the waters of the Great Bay of New York, I submit, should be expunged from the map at the Bibliopotists, and expelled from our physical geography, as a

New Jersey heresy, crept into our orthodox waters, only to fret and divide them.

New York, not once only, but twice, and thrice, and again, has yielded of her cardinal rights and of her imperial proportions, to the construction and establishment of independent States, as, I think, she unwisely, in 1834, parted with a moiety of her right to her way of access to maritime wealth. The irrevocable past I would not seek to reclaim ; but, surely, its lessons should engraft in the future, vigilance, wisdom, and resolution.

JOHN COCHRANE.

New York, June.

II.

MR. BRODHEAD'S REMARKS

BEFORE THE NEW YORK HISTORICAL SOCIETY,
JUNE 6TH, 1865.

MR. BRODHEAD'S REMARKS.

At the meeting of the NEW YORK HISTORICAL SOCIETY, on Tuesday, the 6th of June, 1865, the Honorable JOHN COCHRANE, Attorney-General of the State of New York, read an interesting paper, which he had prepared, showing that "the Kills," and other waters between Staten Island and New Jersey, are really part of the Hudson River, and New York waters.

Before the President put to vote the resolution of thanks, which the Society unanimously adopted :

Mr. JOHN ROMEYN BRODHEAD said, that the paper just read by his old friend and colleague in public service, General COCHRANE, was very gratifying evidence that our ablest statesmen did not always allow themselves to be drawn wholly away from scholarly pursuits, by the claims of official duty, or the clamorous demands of mere partizan politics. It was not often that the highest law-officer of the State was found to possess, either the taste or the training of a historical student ; and when such an accomplished specimen was actually caught, it would be well to prize him as a sort of modern "*lusus naturæ*." The Attorney-General's paper, however, suggested a point, which was of great interest in American history, and particularly in New Jersey history ; and which, up to this moment, was believed to be entirely novel.

Mr. BRODHEAD, proceeded to state it, as follows :

The constant opposition of the early Colonial authorities of New York to the dismemberment of its territory as granted by King Charles the

Second to his brother James, in March, 1664, by the Duke of York's transfer of "Albania," or New Jersey, to John, Lord Berkeley, and Sir George Carteret, in the following June, is, of course, familiar to those acquainted with American history.

The transfer was a very improvident act, which the Duke afterwards regretted, and which he would never have executed, if he had been properly advised. It was done in haste; while the expedition sent to seize New Netherland was yet at sea; and, apparently, through the cojology of the infamous Captain John Scott. No steps were taken by the Duke's grantees to secure their own possession of New Jersey, until dispatches were received from Nicolls that he had conquered New Netherland from the Dutch. It was not until June, 1665, that Philip Carteret arrived in America, as Governor of New Jersey; and then, for the first, Nicolls learned what had been so unwisely done by his chief, after he had left England. For ten months, he had exercised undeniable authority over the entire region between the Hudson and the Delaware, by virtue of his commission, as Governor from the Duke of York, of 2d April, 1664. As soon as he heard the unwelcome news, Nicolls wrote earnestly to the Duke, remonstrating against his improvident cession of New Jersey; and proposing that Berkeley and Carteret should give up their prize, and take, in exchange, the territory on the Delaware, which had been reduced from the Dutch: (*New York Colonial Documents III*, 105; *Chalmers' Political Annals*—who gives the date erroneously, as November, 1685,—624, 625.) On the 9th of April, 1666, Nicolls urged the same suggestion to Lord Arlington, the English Secretary of State: (*Colonial Documents III*, 113, 114.) When he returned to England, the late Governor of New York carried with him a letter from

Maverick, his fellow Royal Commissioner, to Lord Arlington, dated 25th August, 1668, in which the inconvenience of the Duke's release of New Jersey was demonstrated : (*Colonial Documents III*, 174.

The presence of Nicolls at Court, however, seems to have effected, what much trans-Atlantic correspondence might never have accomplished. Its first fruit was to drive Captain Scott, the contriver of the New Jersey release, in disgrace from Whitehall. Its next result was an authoritative judgment that *Staten Island belonged to New York, and not to New Jersey*. Moreover, the personal representations of Nicolls convinced the Duke of York that he had been duped into doing a very foolish thing, when he severed his American province. James, accordingly, took steps to regain New Jersey. It was not difficult for him to do this. Sir George Carteret was in Ireland, of which he had been appointed Lord Treasurer, in 1667. Lord Berkeley, who had been one of the commissioners of the Duke of York's private estate, had just been detected in the basest corruption, and was now turned out of all his offices at Court, (*Pepys, Bohn's ed.*, 1858, *III*, 167, 172, 174, 331, *IV*, 28; *Burnet, I*, 267.) He was glad enough to win the Duke's favor by offering to surrender New Jersey to him; and Carteret, at Dublin, willingly confirmed his partner's offer, especially as they were to receive the Delaware territory in exchange.

The evidence of this interesting, and *hitherto unknown* feature in American Colonial History, has recently come to light in the "*Winthrop Papers*," now in course of publication by The Massachusetts Historical Society. On the 24th of February, 1669, Maverick wrote from New York, to Governor Winthrop, of Connecticut, that Governor Lovelace had just received a letter from his predecessor, Nicolls, at London, an-

nouncing that "Staten Island is adjudged to be long to N: Yorke. The L. Barkley is under a cloud, and out of all his offices, and offers to surrender up the Patent for N. Jarsey. Sir G: Carterett, his partner, is in Ireland, but it is thought he will likewise surrender, and then "N. Yorke will be enlarged." (*Massachusetts Historical Society's Collections*, XXXVII., 315.) Carteret appears to have promptly assented to the proposed surrender; and the transaction was regarded on all sides as complete, for Sir George wrote to his brother Philip, the Proprietors' Governor at Elizabethtown, in June, 1669, that "New Jarsey is returned to his Royall Highnes, by exchange for Delawar, * * * some tract of land, on this side the river & on the other side, to reach to Maryland bounds." (*Massachusetts Historical Society's Collections*, XXXVII., 319.)

Yet, while man proposes, God disposes. Neither the surrender nor the exchange thus arranged were ever accomplished. The restoration of Charles the Second to the Sovereignty, which that grand old statesman, Oliver Cromwell, had administered with such splendid ability, was followed by the most disgraceful poltroonery which marks the annals of sycophantic and title-loving Englishmen. The Court became vicious, to a proverb. Sir George Carteret was expelled the House of Commons, for corruption, in the autumn of 1669; but he still held his place of Treasurer of Ireland. Early in the spring of 1670, Lord Berkeley, the disgraced swindler of the Duke of York, was, by the favor of the king, made Lord Lieutenant of Ireland, where he joined his co-partner Carteret. Both the New Jersey grantees were also proprietaries of Carolina, of which Berkeley had just become Palatine, on the death of the Duke of Albemarle. At this moment, Lord Baltimore, an influential

Irish peer, revived his old claim to the Delaware territory, which he insisted belonged to himself, as proprietor of Maryland, and not to the Duke of York, as the English representative of its ancient Dutch owners, (*Colonial Documents, III.*, 70, 113, 186.)

This Delaware question was a very nice one, for it raised several ugly points about the original title to New Netherland, which the English had usurped from the Dutch. It was handled very gingerly for several years, and was not definitely settled against Maryland, by the Privy Council, until 1685. Meanwhile, Lord Baltimore was a powerful peer of Ireland, and might give her Lieutenant and Treasurer much trouble, if they made him their personal enemy. On comparing notes at Dublin, Berkeley and Carteret thought it their best policy to let the Duke of York fight out the Delaware question with Lord Baltimore in London; and, in the mean time, they evaded the fulfilment of their agreement with James, and retained New Jersey. After the death of Nicolls, in 1672, they even prevailed on the Duke to write to Lovelace, fully recognizing their rights as grantees of the Province. In August, 1673, the whole of ancient New Netherland, including New York, New Jersey, and Delaware, was reconquered by the Dutch. The treaty of Westminster restored these acquisitions to Charles the Second, in February, 1674. In the following June, the King, by a new Patent, regranted to his brother James, the entire territory of New York and New Jersey. What the Duke did after he received his second Patent, it is not my purpose now to explain. I will only remark that the decision which, in 1669, adjudged Staten Island to belong to New York, has never been disturbed.

From this history of the matter, it is clear that if Berkeley and Carteret had performed their

agreement with James, in 1669, the State of New York, at this moment, would have included the present State of New Jersey. The partners who surrendered their patent would, doubtless, have received a patent for Delaware directly from the King. After the treaty of Westminster, all parties would have stood as they did before the Dutch war. The controversy with Lord Baltimore would not have been protracted until the accession of James the Second. But the inscrutable wisdom of the Almighty decreed that human weakness should work great ends; and—as far as we can now see—it is owing to the faithlessness of Berkeley and Carteret to the Duke of York, in 1670, that New Jersey exists as an Independent State.

III.

MR. BRODHEAD'S LETTER

TO THE EDITOR OF "THE GAZETTE," ENCLOSING A
COPY OF HIS LETTER TO MR. WHITEHEAD.

MR. BRODHEAD'S LETTER.

NEW YORK, 25th July, 1865.

HENRY B. DAWSON, Esq., Editor of THE YONKERS
GAZETTE.

SIR: As a note from William A. Whitehead, of Newark, N. J., induced me to write out my remarks, at the meeting of our N. Y. Historical Society, on the 6th of June last—which, at your request, were published in THE YONKERS GAZETTE—it seems to be proper that I should communicate to you the following copy of a letter which I addressed to Mr. Whitehead, in reply, enclosing those remarks, as they appeared in your issue of the 8th instant.

I am, Sir,

Sincerely yours,

JOHN ROMEYN BRODHEAD.

[ENCLOSURE.]

MR. BRODHEAD'S LETTER TO MR. WHITEHEAD.

NEW YORK, 8th July, 1865.

WILLIAM A. WHITEHEAD, Esq., &c., Newark, N. J.

MY DEAR SIR: According to my promise, in acknowledging your note of the 7th ultimo, I enclose a copy (from THE YONKERS GAZETTE, of

this date,) of my remarks at the meeting of our New York Historical Society, on the 6th of June.

I think it is now proved that Staten Island was adjudged to *belong to New York*, as early as 1669; and that, in the same year, Berkeley and Carteret agreed to restore New Jersey to the Duke of York.

It would have been as well, perhaps, if I had added, in my remarks, that Lovelace's purchase of Staten Island from the aboriginies, in 1670, shows, further, that at that time, all parties concurred in recognizing The Duke, as the only European Proprietor of that Island.

He certainly was so, at the Dutch reconquest in 1673; and he became its grantee, directly from the King, *a second time*, in 1674. The Duke's subsequent release to Carteret, (*in severally*,) of the same year, must, of course be taken as not including Staten Island; because *identical words of description*, with those in his first release to Berkeley and Carteret, are employed; and because, *under those words*, the Island had been "adjudged" to belong to New York.

The claim set up in 1681, by the representatives of Sir George Carteret, was, as you know, never admitted by the Duke's authorities; who felt that the original adjudication of 1669—which gave Staten Island to New York—could not be disturbed.

Yours, very sincerely,

JOHN ROMEYN BRODHEAD.

IV.
A REVIEW
OF
GENERAL COCHRANE'S PAPER,
BY
MR. WILLIAM A. WHITEHEAD.

MR. WHITEHEAD'S REVIEW OF GENERAL COCHRANE'S PAPER.

There are some questions which, however thoroughly discussed and definitely settled, will "ever and anon" be evoked from a sleep of years by enquiring, mercurial spirits, with a demand for a rediscussion and a resettlement, although nothing may have occurred while they have lain dormant to warrant the procedure, although no new light may have arisen to illumine what was before dark, or any good purpose be effected by their revival. For a time, factitious circumstances may infuse into a question of this kind, some semblance of vitality and importance ; but, however potent may be the influence of Error, or however protean the forms it may assume, if Truth has been ever elicited, the looker-on may quietly await the issue, confident that the vexed question will ere long, be restored to its wonted state of repose.

Such is the character, such the present position, and such the ultimate fate of the question which was made the subject of extended comment, by the Hon. Mr. COCHRANE, in a paper read at the June meeting of the New York Historical Society.

Nothing has occurred rendering it advisable to change the present mutual boundaries of, or to

disturb the friendly relations existing between, the States of New York and New Jersey ; no new information of essential importance effecting the points formerly at issue, has been gathered ; and only the fact that, a high law officer, connected with the Executive Department of the State of New York, has revived the topic, and given his views, respecting it, publicity—not only by their presentation to such a distinguished body as the New York Historical Society, but by printing them in full over his own name—gives to it a temporary interest. It is the intention of this review to facilitate the return of the subject to the shades whence it was drawn.

The theme which Mr. COCHRANE gravely propounded, and which he so elaborately discussed, was the assertion "THAT THE WATERS BETWEEN "STATEN ISLAND AND NEW JERSEY, THE KILL VAN "COLL, THE SOUND AND RARITAN BAY, OR BY WHAT- "EVER OTHER BAPTISMAL NAMES THEY OR THEIR "PARTS MAY HAVE BEEN, OR ARE NOW DESIGNATED, "TOGETHER WITH ALL THE WATERS WHICH LAKE "STATEN ISLAND SHORES, WERE FROM THE PERIOD "OF THEIR DISCOVERY, KNOWN AND ACCEPTED, AND "SHOULD PROPERLY NOW BE CONSIDERED, THE WATERS OF HUDSON'S RIVER."

The proposition is a simple one, and its operation, if established, equally so : the aim and effect of the learned gentleman's paper being, to cut off New Jersey from any water privileges, excepting such as she may enjoy on her ocean-beat coast, or in Delaware bay, and place her, a suppliant,

at the feet of New York, for permission to enjoy in quietude, the rights which she derives from the same source that conferred upon her larger and more opulent sister State, the germs of her prosperity.

Mr. COCHRANE is met at the threshold of his investigation by certain "baptismal names" borne by the waters referred to, which he conceives to have been "imposed by accumulating "ignorance or *design*;" and seems to imagine that, the generations past and gone, possessed neither eyes to perceive where physical peculiarities required the conferment of special appellations, nor judgment to determine what those appellations should be: his own acquaintance with the localities, and his own experience in navigating these "falsely" named waters, especially qualifying him to succeed where they so signally failed.

In order that his positions may be fairly and fully presented, the following extract from his paper is given at length:

"When Hudson, carefully consulting his soundings, 'went in past Sandy Hook' on the evening of the 3rd of September, 1609, he moored the *Half Moon* in 'The Bay.' A boat's crew proceeding upward to the north, on a subsequent day, (September 6th,) we are told that they passed through the Narrows, into a commodious harbor, 'with very good riding for Ships.' In their further progress northward, they discovered the Kills in "a narrow riuer to the Westward 'betweene two Ilands.' The exploration of this river disclosed to them 'an open Sea,' now

called Newark Bay. When the *Half Moon* first left her anchorage in 'The Bay,' (September 11,) Hudson cautiously passed through the Narrows, 'went into the River,' and again found moorage near the mouth of the Kills, in 'a very 'good Harbour for all windes.'

"This simple statement of Hudson's discovery, purges effectually the clouded medium of subsequently distorted narrative; and our neutral vision has direct access to 'the bay,' the 'harbor,' the 'western river,' and 'the open sea,' unperverted into unnatural lineaments by the false names imposed by accumulating ignorance or design; and representing them as they lay, and as unchanged they lie, in physical aspect, the only distinguishable 'bay' below, the 'narrow straits' above, the estuary, roadstead, or 'harbor' within, 'the river' conducting the upper waters to the west, and beyond that, the 'open sea' in the distance. If now we apply to this fluvial system, the nomenclature adapted to it by the proper names since borne by the river which originated it and the ports on its banks, 'the bay' becomes the Great Bay of the North River; 'the 'Harbour,' the Harbor or Port of New York; and 'the narrow river to the westward' and 'the Narrows' at the south, *the mouths through which the waters of the Hudson discharge themselves* through the Great Bay into the main sea.

"Here, then, is probably the most fitting place for the remark, that the confirmation of this hypothesis will be the explosion of the injurious theory upon which the Treaty of 1834 ceded to New Jersey one-half of the rights of New York to the waters of the Hudson, and of those which separate Staten Island from New Jersey, together with the lands under them, upon the very common error of mistaking the harbor of New York for the bay of New York, and of imposing the name of Raritan Bay on a portion of the waters of the Great Bay of the North River."

The reader will please notice that Mr. COCHRANE'S "Great Bay of the North River" is simply "the bay" of Hudson and other navigators; and as such it will be considered.

On proceeding to advance his proofs applying to his hypothesis, he places prominently among them, and relies greatly upon, the testimony afforded by Maps; but it is a singular fact that *not one*, ancient or modern, confers upon "the bay" any cognomen conveying the idea that its waters are sufficiently homogeneous with those of the North River to authorize the adoption of the restricted appellation suggested by the Attorney General.

The earliest geographers on their earliest maps—those quoted by Mr. COCHRANE—leave it unnamed, as being simply an arm or portion of the Atlantic Ocean: or, when they do give it a specific appellation, designate it as "Port May" or "Godyn's Bay" or "Coenraet's Bay," not recognizing its relation to the North River. But these specific names soon disappeared; and the common sense of each and every generation since, has been in entire accordance with the present nomenclature, which is warranted by the physical peculiarities and configuration of the shores and shoals; as a general appellation, to the whole expanse of the waters referred to, would be necessarily indefinite and consequently inappropriate. Convenience, propriety, and fact coincide in designating the waters to the west of the peninsula of Sandy Hook as those of "San-

dy Hook Bay ;" in considering those immediately south of the Narrows, as constituting "the lower Bay," in contradistinction to the one above ; and those waters lying south of Staten Island, received from the Raritan River and Staten Island Sound, as "Raritan-bay." It is not usual to claim for this last a more extended locality than it is strictly entitled to. It is not made to encroach upon "the lower bay ;" but, in conjunction with "Sandy Hook bay," laves the shores of New Jersey and Staten Island ; and contributes its quota to the ocean, through the Main Channel at Sandy Hook.

It is a noticeable circumstance that Mr. COCHRANE considers those maps which leave this expanse of water *without a name*, as substantiating its claim to the specified title he suggests, no matter what may have been the definite object had in view by their projectors. For example, he draws attention to a Map in "*East Jersey under the Proprietors*," and says, "it confines the name of Raritan to the river now known as such, but represents none for the waters from its mouth to Sandy Hook ;" and he stiles it "a Map of the settled portion of New Jersey *projected and described in the year 1682* ;" adding, "the map of 1682 thus *singularly concurs* with the patent of 1665, [*The Monmouth Patent*] in protecting 'the Bay' from the infectious waters of the Raritan."

Now the author of the work referred to expressly states (*page 123*) that the map "was

"compiled [*for his work, published in 1846,*] from "various sources"—for what? To "give the reader an idea of the extent of the settled portion of the Province," in 1682. That was its purport, nothing more. If he had entertained the remotest idea that his map would have been referred to, to prove the non-existence of Raritan Bay, because of his omission to insert these words, it may be safely assumed that they would have been there. The Attorney-General should award him credit for not being influenced in the preparation of his map, by "the corruptions of the mother tongue" to which he alludes in his paper.

To strengthen his position, Mr. COCHRANE gives two extracts, which connect with "the Bay" the adjuncts which he covets.

Cornelius Van Tienhoven, Secretary of the Province of New Netherland, speaks of it in 1650, as "the Bay of the North River;" and the Patroon Melyss purchased from the Indians, the same year, some lands "at the south side, in "the Bay of the North River;" and with a little more research some few like instances might have been discovered; but it is safe to assume that in all such instances the appellation was not intended to partake of the exclusive character which Mr. COCHRANE would give it. Thus, for example—and one example will suffice, although others might be furnished—De Razieres, in his letter to Blommaert, says, "I arrived before the Bay of the great Mauritze River, sailing into

"it about a musket shot from Godyn's Point "into Coenraet's Bay, where the greatest depth "of water is, etc." (*Collections New York Historical Society, Second Series, ii. 342,*) recognizing the existence among navigators at that early period of a specific appellation for a portion of "the Bay;" and it is a noticeable circumstance that De Vries, who probably went in and out of "the Bay," a greater number of times than any other navigator, during the domination of the Dutch, never conferred upon it a title connecting it exclusively with the North, or Hudson's River.

But is there any thing remarkable that a great river should not carry its name with it to the ocean? There are many streams along our coast which, after placidly meandering through the country, conferring beauty upon the landscape and bestowing beneficent gifts upon the inhabitants, seem to decline having their names identified with the rougher and world-tossed waters of the ocean. The cases are too numerous to admit of the conjecture, that the failure of the stream of the Hudson to carry its name to Sandy Hook is an exception "originating in ignorance or de-" "sign." To insist so strenuously upon revising the present nomenclature, in order to identify the waters of "the bay" with those of the river, argues some weakness in the positive proofs that they are identical.

But it is essential to Mr. COCHRANE'S theory that he should establish this point; and the

greater part of his paper is devoted to its development and illustration ; the applicability of his quotations, in a simple historical enquiry, not being always apparent. He quotes Governor Dongan, who says " We, in *THIS government*, "[New York] look upon *that Bay*, that runs into " the sea at Sandy Hook to be *Hudson River*." This was in 1683—in a letter, by the way, which, for its partizan antagonism to the Proprietors of New Jersey, probably led to his recall by the Duke of York, whose interests he was trying to subserve—and it seems that in 1865 there are some in " *THIS government* " equally blind to the distinction between the bay and the river.

Mr. COCHRANE also quotes two other documents, one a Report upon the controversy respecting the commercial privileges of the Port of Amboy, in 1697; and the other a letter from an Engineer, who responds to the dictation of his superior by reporting the depth of water " in the other branch " of the Hudson's river," called " the Col," in 1701; both of a character similar to that of Governor Dongan's letter, intended as *assertions* of claims yet unestablished ; and about as conclusive as *proofs*, as would be the counter assertions of the Governor and Proprietors of East Jersey, or as the assertions, current some time since, that the new Police Law of New York was unconstitutional, or the right of a State to secede unquestionable—the Port question having been subsequently settled adversely to the claims of the New York authorities, as the last two opinions

have been effectually disposed of contrary to the wishes of those who advocated them.

Mr. COCHRANE considers the "impregnability" of his record evidence confirmed by the "testimony of the ancient Maps;" but an impartial enquirer will soon have reason to be satisfied that their testimony is of little value.

He says of the celebrated "*Carte Figurative*," [N. Y. Col. Doc. i., 13:] "However imperfect the delineations, this map represents unmistakably the River Mauritius (now Hudson) as it washes the margin of Manhates Island, and, *enlarging thence its course to the ocean, swells into an expansive Bay, which encloses Staten Island*, and ultimately passes at 'Sand punt,' into the main sea."

This is a correct description of the map; and similar delineations in other maps—the "swelling into an expansive Bay, enclosing Staten Island"—showing as much water on the west side of the island as on the east, afford a clew to the authority upon which some of the writers of the time describe the locality, and account for the opinions entertained in England respecting it; the knowledge of most of the parties being derived solely from the imperfect topographical details of these maps. But this very "*Carte Figurative*" of date 1616, ignores Mr. COCHRANE'S theory, by giving the name of "Sand bay" to the expanded sheet of water which, he would have us believe, the "accumulating ignorance" of modern times, and the "corrup-

"tions of the mother tongue" prevent being called the Bay of the North River."

This same title of "Sand-bay," so applied, will be found also on Jacobsz Map of "*Americae Septentrionalis*" of 1621, in the possession of Dr. O'Callaghan ; a *fac simile* of which will be found in the same volume of the *New York Colonial Documents* that contains the "*Carte Figurative*."

The description given by Ogilby (which appeared simultaneously with that of Montanus, from whom Mr. COCHRANE quotes through a modern translation,) was evidently based upon the map of "*Nova Belgii Quod nunc Novi Jorck vocatur*," contained in his ponderous volume. As it is uncertain whether Montanus copied Ogilby, or Ogilby Montanus, the extract is here given as it appears in the contemporaneous English—"The Manhattans, or Great River, being the chiefest, having with two wide Mouths wash'd the mighty Island Watouwaks, falls into the Ocean. The Southern Mouth is call'd Port May, or Godyn's Bay. In the middle thereof lies an Island call'd the States Island, and a little higher the Manhattan," &c. (*Ogilby's America*, Edit. folio, 1671, p, 170) Now Ogilby's map was derived from Vander Donck's, which places Staten Island in the centre of an expanded bay—having its specific title it will be observed—forming what Ogilby calls the "Southern Mouth" of the Great River, the other, or *northern mouth*, being Long Island Sound : "Watouwaks," or more properly *Matouwacs* being the designation

of Long Island, whose shores were thus washed. Why does not Mr. COCHRANE furnish a new title for Long Island Sound? The testimony of Montanus and Ogilby is as potent and applicable in that direction as in the other.

It will be perceived, therefore, that it is neither philosophical nor wise to base arguments upon descriptions framed from delineations acknowledged by Mr. COCHRANE himself, to be rude and imperfect. If maps of this character are reliable as evidence, he might claim with equal propriety that the Hudson has *three* mouths; and refer for proof to Van der Donck's map, which makes a stream, which is called the "Groote Esopus River," to connect with the Delaware, affording another outlet for the waters of the Hudson. He might thus have received into its capacious bay not only Staten Island, but the whole of New Jersey, and have quoted authority for it also; for Wynne, in his history, says, "West Jersey has an easy communication *by the river Esopus with New York.*"

But it is unnecessary to pursue this portion of Mr. COCHRANE's argument further: indeed in view of one physical fact which will be educed presently, it need not have been discussed at all; but, before proceeding, some notice must be taken of his labored endeavor to make the appellation, "Achter Coll," given to Newark Bay, derive its significance from its lying back or west of the bay on the east side of Staten Island,

rather than from its relation to what is known as the upper bay or harbor of New York.

The meaning of the words is well understood to be *Behind* or *Back of the Bay*; and the bay meant, would seem to be at once made manifest by the inquiry, "Where did the people live who used the term?" There was a perfect propriety in the dwellers upon Manhattan Island conferring the title upon a sheet of water which lay *behind* or *beyond the bay which intervened between it and them*; but the appellation would have possessed neither significance nor appropriateness, had it been derived from the position of the inner expanse of water with reference to the lower bay, as it did *not* lay back of, or beyond, that bay to them, but *in an entirely different direction*.

It is somewhat remarkable that Mr. COCHRANE should quote Mr. Brodhead in support of his views and "to complete" his proofs. That historiographer says (p. 313) "'Achter Cul,' or "'Achter Kol,' now called 'Newark Bay,' was "so named by the Dutch, because it was 'achter' "or 'behind' the Great Bay of the North River. "*The passage TO THE GREAT BAY was known as "the KILL VAN CUL,"* from which has been derived the present name of "the Kills"—and he quotes Benson as his authority. Both writers evidently intended by "the Great Bay of the "North River," the bay *north* of Staten Island: "the Narrows" *not* "the Kills" being unquestionably the passage *to the lower bay*, which Mr.

COCHRANE wishes to have considered the "Great Bay."

"Achter Coll" from being first applied to the water only, gradually, as population spread and settlements began to be formed on the shores of Newark Bay, became the appellation for the land also, both northward and southward, until the whole of East Jersey would occasionally be designated as "Achter Coll;" but the name, under the English rule, was soon lost; and the student of the geography of the State would scarcely recognize in the name of "Arthur Kull," applied to the Sound between Staten Island and the main, south of Newark Bay, all that is preserved of the original appellation of "Achter Coll." North of the bay and running into New York bay, the stream still retains the appellation conferred at the same early period, the "Kill van Koll," or more commonly "the Kills," as stated by Mr. Brodhead.

It is susceptible of demonstration from documentary evidence, that the specific appellations borne by the waters referred to are not of modern introduction; are not the result of "corruptions of the Mother tongue;" have not originated through "accumulating ignorance" or through any nefarious "design" to absorb the Hudson, but are simply appropriate titles which the physical configuration and position of the localities have rendered necessary. They date back, for the most part, and particularly is it the case with the nomenclature of the waters west of Staten

Island, to times anterior to the transfer of New Netherland to the English ; and it is safe to affirm, that no one acquainted with the localities would venture to express the opinion that such a specific nomenclature should give place to the general appellation of "Hudson's River;" for, as has been intimated already, if it had not been thought advisable to show how little foundation there was for Mr. COCHRANE's theory, even as presented with his chosen authorities, the statement of one single physical fact would have sufficed to refute his arguments.

Mr. COCHRANE is a military as well as a legal General. Let it be supposed that, with the skilfully trained eye of an experienced commander, he has selected a bold and adventurous detachment from among the watery hosts of the Hudson, and having placed himself at its head, he floats off with a strong ebb tide on an expedition to the ocean by the way of the new mouth of the river that he has discovered. On approaching "the Kills" his detachment is confronted and most unceremoniously jostled, turned around, impeded and opposed by a concourse of watery particles, very similar to those composing his more regular organization, but *pursuing a directly contrary course*. On inquiring into the cause of this rough treatment, the General is informed that he has wandered beyond the lines of the hosts of the Hudson, and is in collision with the advanced guard of the conjoined forces of the Passaic and the Hackensack,

coming from the Blue Hills of New Jersey, and proceeding with all speed and irresistible velocity to a general rendezvous at Sandy Hook.

Finding all endeavors at progress in that direction useless, the north corner of the new mouth being effectually closed against him, the General proceeds, we will suppose, to execute a flank movement; if he cannot get in at the north, he may through the south corner; so falling in with the advancing columns of the Passaic and Hackensack, he takes his detachment with them into the lower bay, and watching his opportunity, he joins some returning battalions wending their way westward toward the southern end of Staten Island. By skilful management he prevents any of his force from being sent off with a scouting party up the Raritan, and is congratulating himself that, by continuing with the main body, proceeding northward through the Sound, he is making rapid progress up the Hudson, when, lo! he finds that he and his detachment are being moved bodily to the westward into Achter Coll Bay. Again he resorts to strategy. Succeeding in getting off the direct line of progress, he stealthily conducts his detachment to the right into slack water, and moves onward for awhile. Soon, however, is he interrupted and opposed by an overwhelming force that ridicules any attempt by his puny detachment to advance in that direction, and he finds himself and his command absorbed and carried off to rejoin the column they had sought to escape from—

victims to the grasping propensities of New Jersey.

Did General COCHRANE ever know of a mouth of a river through which *some portion* of its stream did not run in one continuous ebb and flow of tide? But what the tides of "the Kills," "the Sound" and "Raritan bay" *refuse* to do for the Hudson, they do regularly, each and every day, for the Passaic and the Hackensack; in other words, "the Kills" is *the northern mouth of those rivers* emptying into New York bay, as Benson and Brodhead say: "the Sound" is *their southern mouth*, emptying into Raritan bay. Would General COCHRANE have announced to the New York Historical Society that "the waters "of the Hudson in their seaward current, debouch "through both the Narrows and the Kills," or that "the Hudson River empties itself, through "its two mouths, the Narrows and the Kills, into "the Bay of New York?"—would he have thought it necessary to prepare his elaborate paper—had he known that, *not a drop of the water of the Hudson flows through the passage between Staten Island and the main?*

With this fact established beyond controversy, that no waters of the Hudson ever "lave the "Staten Island shores" on the west, this Review might close; but a sense of what is due to truth and history prompts some reference to, and comment upon, the nature of the impeachment of New Jersey before the public thus made by the Attorney-General of her sister State of New

York, and the manner in which she has been arraigned.

Mr. COCHRANE says, "The efforts of New Jersey to neutralize the commercial advantages of New York, and to promote her own aggrandizement are notorious ;" that "recklessness" and "persistence" have characterized the prosecution of her "avaricious desires ;" that, "carved surreptitiously from the side of New York, under the opiates of one Captain John Scott, artfully discharged upon the drowsed senses of James, Duke of York, from the hour of her separation to the present, she has formed her national life to the rugged career of incessant competition with her parent State ;" and is eloquent in the use of expletives such as the "encroachments," "pretensions," "preposterous claims," &c., of New Jersey, exhibiting feelings of irritability and hostility towards the State, which, considering his official position, comity alone should have led him to restrain. Let these accusations receive a brief examination.

The *right* of James, Duke of York, as grantee of his brother, Charles II., to convey to others that part of his domain now constituting New Jersey, does not seem to be questioned, and the intimate relations known to have existed between him and those to whom he disposed of it (See PEPPY'S *Diary and Correspondence*) warrants the assertion that the conveyance was intended to be full and complete, according to its tenor, whither "surreptitiously" obtained or not.

He was dealing with personal friends and not striving to outwit strangers, by only keeping "the word of promise to the ear," and fully expected that the territory he described, with all its advantages and privileges, would pass into their quiet possession. His subsequent acts clearly prove this; for on the 23d November, 1672, more than eight years after the grant, in a letter to his Governor, Lovelace; on the 29th of July, 1674, in a new grant to Sir George Carteret, in severalty; in another, on the 10th October, 1680, to Sir George's grandson and heir; and on the 14th March, 1682, in still another grant to the twenty-four proprietaries, did he reaffirm, in the most emphatic manner, the rights, powers, and privileges originally conveyed. Mr. Brodhead is of the opinion that, although the same words of conveyance were used in all these documents they cannot be assumed as covering Staten Island, because Governor Nicolls, writing to Lovelace in 1669, informs him that "Staten Island is adjudged to belong to New York;" but the well-understood sentiments of Nicolls in relation to the transfer of any part of New Jersey to Berkley and Carteret, render it very necessary to know *by whom* it was so "adjudged:" it was not, certainly, by any legal tribunal, or the question of title would thereafter have been definitely settled; but if "We of THIS government," as Dongan expressed himself, were the only arbiters, it is not surprising that the decision should have failed to meet with general

acceptance. It cannot be fairly presumed that such a curtailment of the original limits of his grant should have been "adjudged," by James; and nothing appear on the face of his subsequent grants to indicate any intention to change the boundaries:—grants made long after the "opiates of one Captain John Scott" must have lost their effect.

These boundaries were so explicit, that it is surprising there should have been any difference of opinion about them. It will do no harm to reproduce them here, inasmuch as they are only given in part by Mr. COCHRANE:

"All that tract of land adjacent to New England and lying and being to the westward of Long Island and Manhattan Island, and bounded on the east, part by the main sea and part by Hudson River, and hath upon the west Delaware Bay or river, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware Bay: and to the northward as far as the northernmost branch of the said Bay or River of Delaware, which is in forty-one degrees and forty minutes of latitude, and crosseth over thence in a straight line to Hudson's River in forty-one degrees of latitude, which said tract of land is hereafter to be called by the name or names of New Caserea or New Jersey."

Could language be used more definite? On the east a river and the ocean—on the west and south a river and a bay—on the north a straight line extending from a point in 41 deg. 40 min. N. L. on one river to a point in 41 deg. N. L. on the other. Yet, it seems, the attempts

of New Jersey to retain what was so clearly in word and intention conveyed to her is characterized by Mr. COCHRANE as indicating an avaricious and grasping spirit. Let a map of the States of New Jersey and New York be examined, and it will be found that the north partition point in their boundary is neither at the "northernmost branch of the Delaware" nor "in 41 deg. and 40 min. of latitude" but at 41 deg. 21 min. 37 sec.! nearly twenty miles of latitude *south* of where it should be; causing about two hundred thousand acres of the soil of grasping New Jersey to lie on the New York side of the line; and had the wishes, aims and projects of the latter *entirely* succeeded, the line would have been still further south.

It would be impossible to compress within reasonable limits the particulars of the negotiations that led to this result: if the details are desired, they can be found in the eighth volume of the *Proceedings of the New Jersey Historical Society*. No one can give them an impartial examination without being satisfied that, if there were any "avaricious desires" exhibited through the long period during which the controversy lasted, it was *not* on the part of *New Jersey*.

Let the same map be looked at with reference to the eastern boundary. A stranger examining its details, with the view of locating the lines named in the grant from James, would most naturally suppose that Staten Island—being part

of the land westward and southward of Long Island and Manhattan Island—belonged to New Jersey; and it may be admissable here, although it has not been intended in this review to touch upon any legal points or technicalities, to draw attention to a passage from the argument of the New Jersey Commissioners in 1828, showing what should be the effect of a literal carrying out of the peculiar phraseology of the grant :

“ Hudson river and all the dividing waters are notoriously to the westward of *Long Island and Manhattan Island*, and therefore within the descriptive words of the grant. *The land* to the westward of these islands passed by express words. This term [*land*] is of great extent in its legal operation, including all above and all below the soil, and therefore embraces all the lands westward covered by water. Unless the words describing the land granted are rejected, *New Jersey must begin where those islands end*. Nor ought they be departed from in favor of the grantor, because he has added a general boundary, calculated to make it vague and uncertain. If a conflict exists between a *particular description* and a general boundary, the latter ought to yield to the former, for it is an established rule in the construction of deeds, that if the grantee's words are sufficient to ascertain the lands intended to be conveyed, *they shall pass*, although they do not correspond to some of the particulars of the description. Then as no doubt can exist of the intention to pass all the lands *to the west of these two islands*, the additional description which makes the eastern boundary to be the main sea and the Hudson, ought not to lessen or impair the benefits of the grant in favor of the grantor, and against the grantees.”

How does it happen then, that New Jersey

with all her avaricious and aggrandizing tendencies should have failed to secure the possession of Staten Island ?

A student of our Provincial history needs not to be informed of the opposition made by Nicolls, whom the Duke of York had appointed Governor of all his possessions in America, to the transfer of New Jersey to Berkley and Carteret ; it has already been adverted to. Before he was aware of the transfer he had exercised authority over the tract and bestowed grants upon persons intending settlements at Elizabethtown and in Monmouth County ; and it was not calculated to add to his amiability or courtesy towards the Proprietors' Governor, Philip Carteret, who arrived in 1665, to have those grants very summarily nullified by his superior. Carteret's attention being engrossed by the weighty cares and responsibilities incident to his peculiar position in a new land, among strangers, with few, if any, trusty advisers, all expedients and measures for peopling and governing the Province untried, it is not surprising that questions concerning boundaries or territorial rights, should for a while have been left untouched. It is not to be supposed, however, that, because, as Mr. COCHRANE states, he has failed to discover any "recorded evidence" of the "initiation of New Jersey's enterprising "encroachments" upon Staten Island, prior to 1681, that her right thereto was not previously thought of and asserted. It is susceptible of

proof that acts of jurisdiction were performed by New Jersey, prior to that date, not only upon the island, but over the surrounding waters, in issuing patents and establishing ferries—one ferry, between Communipau and New York, was *licensed* as early as 1669, by Governor Carteret ; and another was established between Bergen, Communipau, and New York in 1678 : Mr. COCHRANE has discovered *an application* made to the New York authorities for the establishment of one in 1750, nearly a century later, and considers that a proof of jurisdiction over the waters being ascribed to that province. Will he accord equal sufficiency to the prior cases in New Jersey ?

But as many of the inhabitants of the city of New York, both Dutch and English, had their plantations on Staten Island, their relations had been and continued to be altogether with that place and government ; and of course the authority of the functionaries of New York became more firmly established with each passing year. Yet there are not wanting, evidences of a conviction in the minds of some of the first men of that province, that Staten Island had passed from under their control. Thus in 1668, Samuel Mavericke, one of the King's Commissioners, in a letter to Secretary Arlington, says plainly—when objecting to the transfer of New Jersey to Berkley and Carteret :—" The Duke hath left of " his patent *nothing to the west of New York.* * * " Long Island is very poor and miserable and

"beside the city there are but two Dutch townes
 "more, Sopus and Albany," Staten Island was
 too important a settlement to have been left out
 of this summary had it been regarded as yet a
 part of New York. If no doubt was entertained,
 how comes it that, as the *Winthrop Papers* show,
 Nicolls should think it of interest to announce
 that the island had been "adjudged to New
 "York."

It will be remembered also, that negotiations
 were on foot for an exchange of New Jersey for
 other possessions on the Delaware; and that the
 exchange was thought at one time to have been
 perfected. This of course would repress any
 formal attempts by Governor Carteret to possess
 himself of the island; and, shortly after, came the
 Dutch to reconquer the country and unsettle the
 relations between the people and the govern-
 ment. So that the point made by Mr. COCHRANE,
 of the postponement of the "enterprising en-
 "croachments" of New Jersey until 1681, if
 well taken, is susceptible of explanations show-
 ing it to have been perfectly consistent with an
 unshaken belief in the sufficiency of New Jersey's
 claim.

The repeated confirmations of the original
 boundaries by the Duke, have already been
 adverted to. They cannot be otherwise con-
 sidered than as virtual rebukes of the aggressive
 disposition of his governors, and established
 beyond doubt his own intention to concede all
 his rights within those bounds; for although his

Secretary, Werden, at one time expressed some doubt as to whether the successors of Sir George Carteret ("for whom the Duke hath much esteeme and regard") would receive from him equal favor, yet we find the same Secretary, as late as November, 1680, writing, that his Royal Highness had been pleased "to confirm and re-lease to the Proprietors of both Moities of New Jersey all their and his Right to *any Thing* besides the Rent reserved, *which heretofore may have been doubtful*, whether as to Government or to Publick Dutys in or from the places within their grants." Is it at all surprising that, with such documents in their possession, the proprietors should have contested the occupancy of Staten Island by New York? or that from that time to the year 1833, New Jersey should have consistently asserted the superior validity of her claim? Should her course in doing so, without any resort to ultra measures to enforce it, bring upon her contumely and unwarrantable aspersions?

Notwithstanding all the proceedings of New York calculated to exasperate her people—the forcible arrest and abduction of her citizens from her own soil, even from the very wharves of Jersey City, under processes from New York Courts—the neglect often shown to the appeals of New Jersey for some action that might lead to a settlement of the controversy—even actual insults, most pointedly evinced by the passage of an Act by one of the Legislative houses, in

1827, at the very time when Commissioners were in session at Albany, discussing terms of compromise, which declared the boundary of New York to extend to low water mark along the whole of the New Jersey shore: notwithstanding all these acts of attempted or successful aggression, New Jersey has ever shown *not* an avaricious but a conciliatory and liberal spirit never more clearly shown than in the terms she finally acceded to, by which she relinquished Staten Island and other possessions, in order that she might rescue her rights in the adjoining waters from the *absorbing* tendencies of New York.

One other topic is presented by Mr. COCHRANE, which must be noticed before this *Review* of his remarkable paper is brought to a close. It is intimated therein that the determination of New Jersey's claims "will doubtless require the ultimate decision of the Supreme Court of the United States."

The Supreme Court of the United States has never before, probably, been held *in terrorem* over New Jersey. Asserting no claim not founded in right, asking nothing she might not reasonably expect to be granted, and ever ready to make all proper concessions for the preservation of peace and promotion of harmony, the decisions of the Supreme Court have rather been sought than avoided in all controverted cases, as likely to bring with them satisfactory results. This disposition has been remarkably evinced in

the progress of the discussions with New York respecting boundaries.

Who proposed, in 1818, the appointment of Commissioners to prepare a statement of facts relative to the controversy, to be submitted to the Supreme Court for its decision? New Jersey! By whom was the proposition left, not only unresponded to, but *unnoticed*? New York! Who was it that, in 1828, declined to recommend a reference of the matter to the Supreme Court, as suggested by the Commissioners of New Jersey? The Commissioners of New York! What, eventually, was the principal inducement New York had for the appointment of the Commissioners who agreed upon the terms of settlement in 1833? The commencement of a suit in the Supreme Court, with the view of having the just claims of New Jersey established! The fact is indisputable, that the unwillingness to bring the matters at issue to a judicial decision, has all been on the part of New York. Why then, after New Jersey has thus fairly manifested her desire to abide by the decisions of the tribunal of last resort, does the Attorney General of New York think it necessary to threaten her therewith? Why, after more than thirty years acquiescence in, and, it is believed, cordial coöperation on the part of both States to carry out, the terms of the agreement entered into in 1833, is it now thought becoming for so prominent an officer of the State of New York to call in question in so public a manner, the propriety of that

agreement, if not, indeed, its binding force ? Doubtless, if Benjamin F. Butler, or Peter Augustus Jay, or Henry Seymour were living, the Historical Society of New York might have it demonstrated that, as Commissioners of New York, they did not assent, in that agreement, to any thing which "trafficked" away "the interests of the State," or "compromised them by relinquishing a moiety of the unquestioned rights of New York." It is no part of the writer of this *Review* to vindicate them ; that must be left to others.

The agreement of 1833 was intended to be perpetual, every formality being observed calculated to give it a duration commensurate with the existence of the States themselves, having been confirmed by the legislatures of both, and sanctioned by a special law of Congress, "made in pursuance of the Constitution," and consequently of supreme authority, "any thing in the Constitution or Laws of any State to the contrary notwithstanding." Is it at all probable that the Supreme Court could, if it would, or would if it could, set aside an agreement thus made and thus ratified ? Surely, any attempt to disturb the amicable relations existing between the two States, by suggestions of the kind put forth by Mr. COCHRANE, cannot but be considered impolitic, unjust, and unwarranted by any circumstances of the time.

Enough has been said to show how erroneous in all respects are the views the gentleman has

promulgated in consequence of his misconception of the true topography of the district under discussion. Technicalities of law have not been touched upon, as their discussion entered not into the intentions of the writer; but had the claims of New Jersey been submitted, as she desired, to the decision of the Supreme Court, the results would probably have been more favorable for her interests.

The length of this *Review* precludes any discussion of the terms of the agreement of 1833-4 fixing the boundaries as they now are. Although so inconsiderately denounced by Mr. COCHRANE, they will be found on examination to have been framed in a spirit of anxious solicitude to put an end forever to the disputes between the two States, the concessions being for the most part made by New Jersey, and it is hoped that, neither by word nor deed, may the good understanding then arrived at, be disturbed. W. A. W.

NEWARK, New Jersey, August, 1865.

NOTE.—The views expressed in the foregoing *Review*, at variance with the opinion of Mr. Brodhead—that the grant by the Duke of York to the twenty-four proprietors of East Jersey in 1682, although repeating the original boundaries, should not be considered as including Staten Island, because in the intermediate time Nicolls announced that the island had, by some one, been “adjudged to New York,” despite those boundaries,—are fully sustained by the proceedings of a Council held at “Fort James, Feb. 16,

"1683-4 ;" called, apparently, for the express purpose of considering the limits of that grant, and by subsequent circumstances growing there-out.—(*New York Minutes of Council, Liber. 1683-88*)

At that Council Mr. Recorder, afterward Attorney General, Grahame, said, "he believed in "that clause, 'whole intire premises,' [conveyed by the previous grant to Berkley and Carteret,] "was to be understood only the intire tract of "land, and the other clause, 'as far as in him "lyeth,' made a doubt whether the Duke had "authority so far:" and while in doubt, it was suggested that a remonstrance should be sent to his Royal Highness, showing the "inconvenience of suffering East New Jersey to come "up the river." The question involved was evidently the extending of East New Jersey "up "the river," opposite Manhattan Island. No doubts seem to have been entertained as to the effect of the grant upon Staten Island and surrounding waters; for the Duke, as if to set at rest all questions growing out of the formerly expressed boundaries, not only repeated them and conveyed the eastern moiety of "the whole intire premises," but *added*, "TOGETHER WITH ALL "ISLANDS, BAYS, &c.," words not in the original grants; and inserted the further significant clause "As also the free Use of all Bays, Rivers and "Waters, leading unto or lying between the said "Premises, or any of them, in the said Parts of "East New Jersey, for Navigation, free Trade, "Fishing, or otherwise."

That these words were considered by the Council as covering Staten Island and its waters, is conclusive from the fact that Captain John Palmer, the largest holder of lands on Staten Island under New York grants—one of the Council subsequently, and *present at the meeting referred to* by invitation of the Governor—not esteeming

his property there safe without a title from the proprietors of East Jersey, *immediately thereafter applied to them for patents, and on the 26th May following, obtained them for seven tracts of land, covering in all 4,500 acres.*

The letter also of the Earl of Perth and his associates, dated August 22d, 1684, written in consequence of the proceedings of this Council, states expressly, "Wee Doubt not both the Duke, " and they [his Commissioners] are fully convinced of our right in everie Respect ; Both " of Gouernment, Ports, and Harbours, free trade " and Navigation, *and having spoke to the Duke,* " wee found him verie just, and to abhorr the " thought of allowing any thing to be done contrary to what he hath past under his hand and " seall."

It may be, therefore, safely asserted that no idea was entertained by the Duke of York of deviating from the strict letter of the grants, *by which* Staten Island must be considered as having been adjudged to *New Jersey*, not only before Nicolls' letter was written, but as in the last instance noted, more explicitly still, thirteen years thereafter, in the most authoritative and legal manner.

V.

A REVIEW

OF THE

QUESTIONS UNDER DISCUSSION,

BY

MR. HENRY B. DAWSON.

MR. DAWSON'S REVIEW.

The question which has been so ably discussed in the columns of *THE GAZETTE*, by the learned Attorney-General of the State of New York and by the two distinguished historians, Messrs. BRODHEAD and WHITEHEAD, who followed him, is one which possesses great historical importance; indeed, no other subject than such an one, could have arrested the attention and employed the pens of such a trio of disputants.

The question was thus stated, originally, by General Cochrane: "THE WATERS BETWEEN STATEN ISLAND AND NEW JERSEY, THE 'KILL VAN COLL,' 'THE SOUND,' AND 'RARITAN BAY,' OR BY WHATEVER OTHER BAPTISMAL NAMES THEY OR THEIR PARTS MAY HAVE BEEN, OR ARE NOW, DESIGNATED, TOGETHER WITH ALL THE WATERS WHICH LAKE STATEN ISLAND SHORES, WERE, FROM THE PERIOD OF THEIR DISCOVERY, KNOWN AND ACCEPTED, AND SHOULD PROPERLY NOW BE CONSIDERED, THE WATERS OF HUDSON'S RIVER;" and the affirmative arguments of the learned proponent were sustained by remarks and a letter from Mr. BRODHEAD; while all these were

subsequently controverted in an elaborate *Review*, by Mr. Whitehead. It is the purpose of this paper to notice the arguments and evidence which have been adduced by each of the gentlemen referred to ; and, as far as may be possible, from those arguments and that evidence and from authorities which none of those who have gone before, have employed, it is hoped that some further light may be thrown on a subject which has merited and received the notice of many of the leading minds of our country, at different periods of her history.

It is not pretended, even by the learned proponent, that the question under discussion possesses any other than a historical significance, unless it shall be incidentally ; and it is not proposed, by this paper—as it was not by him—to disturb the peaceful relations of the two States on this subject, as they were settled by the inter-State Treaty of 1834. It is not considered improper, however, to gather wisdom from any of the lessons of the Past ; and the dignity of History may not be improperly asserted and maintained, and her importance in the disposition of great questions of State, may find a satisfactory illustration, it is hoped, even in so informal a discussion as this.

It will be seen from the argument and authorities of General Cochrane, that he maintained that “the Bay” is the proper term for what is now generally known as “the lower Bay ;” that the Hudson river, after receiving the waters

of the East river and forming "the harbor," discharges its waters through two mouths, which are separated by Staten Island, into "the Bay;" and that, in consequence, the local names of "Kill van Coll," "The Kills," "The Sound," "Raritan Bay," etc., which have been applied to the westernmost of these mouths, possess no primary significance in the relations between the two States.

The effect of this argument, if it shall be sustained by the evidence, will be to guarantee to the State of New York, historically, her ancient possession of Staten Island; to deny the historical propriety of the cession of a portion of the waters of New York to New Jersey, which was effected by the Treaty of 1834; and to define more distinctly the character of other portions of those waters, not included in the Articles of the Treaty referred to, as well as the respective rights of each of the States of New York and New Jersey, therein, and in every part thereof.

Mr. Brodhead, in his remarks before the New York Historical Society and in his letter to Mr. Whitehead, has sustained the proposition of General Cochrane, both by authorities and by argument; and the weight of his concurrence in General Cochrane's views, adds materially to the importance of this discussion.

Mr. Whitehead, on the contrary, denies both the premises of General Cochrane and his conclusions.

He admits that "the earliest geographers on "their earliest maps leave it" [*the lower Bay*] "unnamed, as being simply an arm or portion of "the Atlantic Ocean;" but he denies that it is proper to consider it as "the Bay" or "the "great Bay" of history: he denies, also, that the waters which separate Staten Island from the main land of New Jersey either have been or can be considered, properly, as one of the channels of the Hudson river; and that the local names of the waters last referred to, such as "Kill van Coll," "The Kills," "The Sound," and "Raritan Bay," have no more than a local and limited significance.

He contends on the contrary, that the waters which separate Staten Island from the main-land are the waters of the Raritan, and Passaic, and Hackensack Rivers, and that they have no relation to the Hudson; that the waters of the latter are discharged into "the Bay" or harbor of New York; and that the only outlet to the ocean of the waters of "the Bay"—into which the Hudson, the East, the Passaic, and the Hackensack Rivers are supposed to flow—is the strait which is known to us as "the Narrows."

The effect of this argument, if it shall be sustained by the evidence, will be to confine the mouth of the Hudson, historically, to a line extending from the Battery, in the city of New York, to the Jersey shore, probably at Powles' Hook; to consider the harbor of New York as "the Bay" of History, with its outlet at "The

"Narrows," so-called ; to transfer Staten Island, historically, to New Jersey ; to establish, historically, the claim of New Jersey to the entire waters of "the Kill van Coll," "the Sound," and "Raritan Bay ;" and to deny the historical propriety of what may then be considered a surrender by that State to New York, in the Treaty of 1834, of Staten Island and of the easternmost one-half of the waters which separate that island from the main-land of New Jersey.

There are several other subjects, of little relative importance, which have been introduced by the parties who have principally participated in this discussion ; but they are not of sufficient weight to withdraw from the main questions, the careful attention of the reader—indeed they tend rather to confuse than assist the intelligent student, in his laborious search for the truth of the matter. These, therefore, will remain either unnoticed in this paper, or, if any attention shall be paid to them, they will be alluded to, in passing, in the course of the discussion of other and graver subjects.

It will have been seen, also, that both the leading parties in this discussion appear to rely greatly on the terms of the grant by the King to the Duke of York, dated March 12, 1664 ; on those of the Lease by the Duke to Lord John Berkeley and Sir George Carteret, dated June 23, 1664 ; and on those of the Release to Berkeley and Carteret, which was executed by the Duke, on the 24th of June, of the same year.

It cannot be denied that these several instruments are interesting as well as useful ; but it is not so clear that they possess any other importance in this discussion, than that which attaches to them, as illustrative of the meaning of those which are greatly more important. They will be regarded in this paper, therefore, rather in the useful but less important character of merely illustrative documents ; while the more authoritative testimony of other instruments will be appealed to, for the foundation of the remarks which shall now be offered on the subject.

The reasons for this rejection of the Charter of March 12, 1664, and of the Duke's Lease and Release of June 23 and 24, of the same year, as leading authorities in this discussion, may be very briefly stated. They are these :

FIRST : There are very grave doubts of the validity, under the established and recognized law of England, of that Grant which assumed to convey an estate which was not only claimed by a foreign power with which England was then at peace, but one which was actually in the undisturbed possession of that friendly power, at the date of the Grant, and for many months after the execution and delivery of that instrument to the Duke of York.

SECOND : Whatever legal rights the Duke or his grantees, Berkeley and Carteret, may have secured in the territories or waters in question, by virtue of the King's Grant of March 12, 1664, and

the Duke's Lease and Release of June 23 and 24, of the same year, they were wholly annihilated by the re-conquest and subsequent occupation of that territory and those waters by the Dutch, under Commanders Binckes and Evertsen, in 1673; and any rights which either the Duke of York, or Lord John Berkeley, or Sir George Carteret possessed therein, after the restoration of the same to the English, and the actual occupation thereof by the latter, under Major Edmund Andros, were derived SOLELY from the Royal Charter to the Duke, dated June 29, 1674, and from the Duke's Lease and Release to Sir George Carteret, in severalty, dated July 28 and 29, 1674, and from no other source whatever.

For these reasons, among others, the so-called Charter and Lease and Release of 1664 are not considered valid, for the determination of contested Rights which have wholly accrued since the days of the dates of the Charter and Lease and Release of 1674; although the former may properly be employed to illustrate the meaning of specific terms employed in the latter, whenever they will admit of any such illustration.

The preliminary questions which have arisen in this discussion having been thus disposed of, the subject which was proposed by General Cochrane, in its most simple form, presents itself for our consideration—to the territory of which State, New York or New Jersey, do the waters which separate Staten Island from the main, historically belong?

It is matter of History, and, therefore, needs no proof, that the waters in question as well as the adjacent shores of Staten Island and New Jersey were portions of the territory of the Colony of New Netherland, which was seized in 1664, by the English under Colonel Nicholls; that with that Colony, they were recaptured, agreeably to the Law of Nations, in 1673, by the Dutch under Commanders Binckes and Evertsen; that in the following year, agreeably to the terms of the Treaty of Westminster, they were restored to the King of Great Britain from whom they had been captured; and that the latter was thereby vested with all the rights of Proprietary as well as of Sovereignty, over every part and parcel of them.

It is matter of History, also, that on the twenty-ninth of June, 1674, "for divers good Causes" and Considerations, of his special Grace, certain Knowledge, and meer Motion," the King of Great Britain, in whom the title was then vested, granted divers lands and waters, among which were those in question, to his brother, James, Duke of York and Albany; (*Letters Patents to the Duke of York, Recorded November 4, 1674—Grants, Concessions, and Original Constitutions of the Province of New Jersey*, by A. Leaming and J. Spicer, 41-45;) that, on the twenty-eighth of July, 1674, for a valid consideration, the Duke of York, in whom the title was then legally vested, Leased to Sir George Carteret a certain "Tract of Land," being a portion of

those which had been Granted to him by the King, in the preceding month, conditioned for the payment of a certain specified rental ; (*Recital of the Duke's Release*, July 29, 1674—*Leaming and Spicer*, 48 ;) that, by virtue of that Lease, Sir George Carteret took immediate and " actual " Possession of the said Tract of Land and Premises" referred to therein. (*Release by the Duke*, July 29th, 1674 ;) that, on the following day, (July 29, 1674,) the Duke executed, agreeably to the Statute, a Release to Sir George Carteret, of the " Tract of Land " referred to in the Lease to which reference has been made, (*Release by the Duke of York*, July 29th, 1674.—*Leaming and Spicer*, 46-48,) commissioned a " Governor " and Councillors," for the administration of a Government therein, (*Commission from Sir George Carteret to Phillip Carteret, etc.*, July 31, 1674—*Leaming and Spicer*, 58-60 ;) and issued certain " ' Directions, Instructions, and Orders ' " * * to be observed by the Governor and Council, and Inhabitants of the said Province;" (*Directions, etc.*, July 31, 1674—*Leaming and Spicer*, 50-57 ;) and that there remained to the Duke all others of the Lands and Waters, and, without any diminution whatever, every other Right and Property which had been conveyed to him by the King, in the Letters Patents, to which reference has been made.

It will be seen, also, by reference to the Letters Patents, of the King to the Duke, that *separate from, and in addition to*, the conveyance to

the latter of the "Lands, Islands, Soils, Rivers, "Harbours, Mines, Minerals, Quarries, Woods, "Marshes, Waters, Lakes, Fishings, Hawking, "Hunting and Fowling ; and all other Royalty's, "Profits, Commodities and Hereditaments to the "said several Islands, Lands and Premises belonging and appertaining," which was contained therein, the King "further" gave and granted unto the Duke of York, "full and absolute Power and Authority to correct, punish, "pardon, govern and rule all such the Subjects "of us, our Heirs and Successors, or any other "Person or Persons, as shall from time to time "adventure themselves into any of the Parts or "Places aforesaid, or that shall or do at any "time hereafter inhabit within the same, according to such Laws, Orders, Ordinances, Directions and Instructions *as by our said dearest "Brother, or his Assigns, shall be establish'd,*" etc.—in short, that the Duke was vested with sub-royal authority therein, subject only to the provisions of the Laws of Great Britain and to the right of Appeal to the King ; (*Letters Patents to the Duke, June 29th, 1674—Leaming and Spicer, 41-43 ;*) no portion of which Prerogatives, affecting the Realities of the territory, was conveyed or delegated by him to Sir George Carteret, in the Lease and Release of "the "said Tract of Land and Premises" to which reference has been made, nor in any other Instrument of Conveyance or Delegation, either at that time or at any subsequent period. (Com-

pare the *Release to Sir George Carteret*, dated July 29th, 1674, with the *Letters Patents to the Duke of York*, June 29th, 1674.)

By reference to the Lease and Release by the Duke of York to Sir George Carteret, which is the original source of the title of the latter and of his representatives, in and to the "Tract of "Land and Premises" which were known, subsequently, as East Jersey. and to its Appurtenances, it will be seen that the Duke Released and Conveyed "unto the said Sir George Carteret, "his Heirs and Assigns for ever, all that Tract of "Land adjacent to New-England, and lying and "being to the Westward of Long-Island and "Manhitas Island, and bounded on the East part "by the main Sea, and Part by Hudson's-River, "and extends Southward * * * * which "said Tract of Land is hereafter to be called by "the Name or Names of *New-Cæsarea*, or *New-Jersey*: And also all Rivers, Mines, Mineralls, "Woods, Fishings, Hawking. Hunting, and "Fowling, and all Royalties, Profits, Commodities, and Hereditaments whatsoever, to the said "Lands, and Premises belonging or appertaining "with their and every of their Appurtenances, in "as full and ample manner as the same is granted "unto the said James Duke of York by the before "recited Letters Patents; and all the Estate, "Right, Title, Interest, Benefit, Advantage, "Claim and Demand of the said James Duke of "York, of in and to the said Lands and Premises, "or any Part or Parcel thereof, and the Rever-

"sion and Reversions, Remainder and Remainders thereof;" and nothing more (*Release to Sir George Carteret*, July 29th, 1674.) None of the "Islands," nor "Soils," nor "Harbours," nor "Waters," nor "Marshes," which had been conveyed to the Duke in the King's Letters Patents, were thus conveyed by the former to Sir George Carteret; nor were any of the "Rivers" or "Fishings," etc., thus conveyed, except those "to the said Lands and Premises" [described in the *Release*] "belonging or appertaining." (Compare the *King's Letters Patents* with the Duke's *Release*.)

The "Tract of Land and Premises" which were thus conveyed to Sir George Carteret, therefore, and the "Rivers belonging or appertaining thereto," were and are, historically, all that then formed, or now form, the Province or State of East Jersey; and whatever tracts of land and whatever rivers "belonging or appertaining thereto," which were not thus Released, and all the Islands, Soils, Harbours, Waters, and Marshes which were between Connecticut River on the East and Delaware River on the West,—whether within or without the limits of East Jersey—"together with the River called Hudson's River" and the several Prerogatives of sovereignty which had been separately and specifically conveyed to the Duke by the King, (*Letters Patents*, June 29th, 1674) remained with the Duke, entirely unimpaired.

Whether or not the waters which separate Staten Island from the main were then considered,

or are now to be considered, historically, waters of Hudson's River—which was the only question proposed by General Cochrane—may be ascertained from the terms of the Duke's Release to Sir George Carteret, as illustrated by the standard geographical authorities of the day and by the subsequent action of both the Grantor and Grantee, in the premises; while from the terms of the same Release, compared with those of the Letters Patents and the subsequent action of both the Grantor and Grantee, in the premises, may be most accurately ascertained, **SECONDLY**, whether, in whatever character those waters were then considered, they were really conveyed or intended to be conveyed, by the Duke to Sir George Carteret, and thenceforth became part and parcel of East Jersey,—a question which seems to have received the earnest attention of both General Cochrane and Mr. Whitehead—and, **THIRDLY**, whether those waters, and the adjacent Islands and Marshes, on either side of the stream, in whatever character those waters were then considered, or may now be considered, were retained by the Duke of York as part of his Colonial possessions and are still to be considered, historically, waters and lands of the State of New York.

It has been seen that the title to the waters in question, as well as that to the adjacent shores, was vested in the Duke of York, by the King's Letters Patents, on the twenty-ninth of June, 1674; and that on the twenty-ninth of July, in

the same year, the former conveyed to Sir George Carteret, by Release, certain specified portions of the estate which had been Granted to him by the King, retaining to himself, with title unimpaired, all those waters and all those lands, thus Granted to him. which he did not then specifically convey to Sir George Carteret, by the Release referred to.

It has been seen, also, that among the waters thus retained by the Duke, without encumbrance of any kind, were those of Hudson's River ; and the first question which presents itself is, were the waters in question, on the twenty-ninth of July, 1674, treated in the Release by the Duke of York to Sir George Carteret, and should they now be treated, historically, as waters of Hudson's River ?

It will be seen by the terms of the Duke's Release, that none of the " Islands " which he had received from the King, a month before, were conveyed by him to Sir George Carteret ; (Compare the Duke's *Release* with the King's *Letters Patents*,) and consequently, that, Staten Island, both in law and in fact, remained a portion of the Duke's Colony of New York ; and that the boundary between the two Provinces of New York and New Jersey was *then* drawn to the *westward* of that Island, where " the Kills " and the Sound " are, rather than to the *eastward* of it, where " the " Narrows " are, as some have supposed and maintained.

It will be seen, also, that the Duke's Release

described "the Tract of Land and Premises" conveyed to Sir George Carteret, as "bounded " on the East part by the main Sea, and Part by " Hudson's River ;" (*Release to Sir George Carteret*, July 29, 1674—*Leaming & Spicer*, 47 ;) that no intervening waters or lands, between " the " main Sea " and " Hudson's River," were named or referred to ; and that, consequently, either " the main Sea," or " Hudson's River," or portions of each, were *then* considered, both by the Grantor and Grantee, as flowing between Staten Island, which the Duke retained, and " the " Tract of Land and Premises," " to be called by " the Name or Names of *New-Cæsarea* or *New-Jersey*," which he conveyed to Sir George Carteret.

It is proper, in this place, to notice the fact that Mr. Whitehead, following the example of many honored predecessors, has insisted that the waters which separate Staten Island from the main, are, in fact, the waters of the Hackensack, Passaic, and Raritan Rivers, rather than those of the Hudson, that not a drop of the waters of the latter, passes to the westward of Staten Island to the sea ; and that, in consequence, the waters in question have not been, nor are they now, *in fact*, waters of Hudson's River. (*Review*, *Number IV*, *ante*.)

It is not the purpose of this paper to dispute these statements : it is rather its province to admit what is *true* and to resist that which is *false* ; but the question is not as to the *physical*

facts concerning those waters, but, solely, the historical character which belongs to them.

In 1769, when the Commissioners of New York for determining the Northern line of New Jersey insisted on a line which, if extended would have run from the *head* of Connecticut River to the head of Delaware Bay, the Commissioners of New Jersey, (Messrs. Stevens, Parker and Rutherford,) submitted, in opposition to the proposed line, that "Whatever may be the strict Rule of Law in the Construction of Deeds and Grants, in Cases where it may well be presumed both the Grantor and Grantee have all the means of being well acquainted with the Premises to be granted, yet in the present Case where the whole Country was at the Time of the Grant of King Charles the Second to the Duke in the possession of the Dutch, and the interior Part of it, then but little known to the King or his Subjects ; it is humbly conceived that however uncertain or indeterminate the express Words of such Grant AS TO IT'S EXTENT may be, THE PRINCIPLES OF JUSTICE REQUIRE, THAT THE INTENT AND MEANING OF THE PARTIES SHOULD BE THE GOVERNING RULE OF CONSTRUCTION. In the Grants of many of the Colonies on the Continent," they add, "there will be found either an uncertainty, or an interfering with respect to their Bounds and Extent, and yet they have always been adjusted upon the Principle of the INTENTION OF THE GRANTS : " (MS. Brief of the Claims of the Province of New Jersey, September 28, 1769

—pages 45, 46—*N. J. Boundary Papers*, ii. New York Historical Society.) They also cited, in support of that very just view, the precedent of “the Proprietors of the Patents of Minisink and Wawayanda, [who] upon a late Occasion insisted that considering the Antiquity of the Grant to the Duke of York, it ought reasonably to be supposed that *it's true Boundaries were better understood AT OR SHORTLY AFTER THE TIME OF ITS DATE THAN AT THIS DAY.*” (*Ibid*, page 53.) See also, pages 38, 39, of the same *MS. Brief*. for further illustrations of the views of the Commissioners from New Jersey, on this subject.

The view of the principles which, in 1769, “should be the governing Rule of Construction” of the terms of the Grant to Sir George Carteret, is equally true in 1865; and the New Jersey theory, at the former date, for the determination of her *Northern* line, cannot be reasonably disregarded by her advocates, to-day, while discussing the question of her *Eastern* line,—whether the waters of Hudson’s River *really* pass to the westward or to the eastward of Staten Island, or on neither of its shores, is, therefore, entirely immaterial in this discussion, and What did the parties to the Release understand was the case, when that instrument was executed? and What was their “Intent and meaning” while conveying and receiving that “Tract of Land and Premises,” “which is hereafter to be called by the Name or Names of New-Cæserea or New-Jersey?” are the only questions to be now determined.

That there was no intervening boundary between New York and New Jersey, between the mouth of "Hudson's River" and "the main Sea," according to the "*Intent and meaning of the Parties*" to the Release, is evident, from the entire absence of any allusion to any other line of boundary, on the Eastern border of New Jersey than "the main Sea" and "Hudson's River," as was before stated, as may be conclusively ascertained by reference to the Release by the Duke to Sir George Carteret: the exact spot where "the main Sea" was joined by the waters of "Hudson's River," in the Intent of the parties to that Release, will be seen hereafter.

This fact is evident, also, in the current opinions of the day, as expressed by standard Geographers of that period; and from the same authoritative evidence, *what was then understood by the term "Hudson's River,"* may, also, be accurately ascertained.

Three years before the execution of the Release in question, (1671) John Ogilby, at that time the Royal Cosmographer, had published in London, under the patronage of the King, a splendid folio volume, descriptive of America, which was doubtless the standard authority at the time of the conveyance of "The Tract of Land" and Premises" to Sir George Carteret.

Speaking of the rivers of "New Netherland, now call'd New York," this official Cosmographer thus alluded to the Hudson: "The *Manhattans, or Great River, being the chiefest,*

"having with two wide Mouths wash'd the mighty Island *Watowaks*, falls into the Ocean. The Southern Mouth is call'd *Port May*, or *Godyns Bay*. In the middle thereof lies an Island call'd *The States Island*; and a little higher the *Manhattans*, so call'd from the Natives, which on the East side of the River dwell on the Main Continent." (*America: Collections from the most Authentic Authors*, by John Ogilby, Ed. London, 1671, page 170.)

The description of Hudson's River, with its "two wide mouths," the Southernmost of which he termed "*Port May* or *Godyns Bay*"—names used by Mr. Whitehead to prove that the waters were *not* the waters of Hudson's River—and with "an Island call'd *The States Island*" [*Staten Island*] "IN THE MIDDLE THEREOF," was illustrated by this *protégé* of the King, with an elegant map, in which his theory of the character of the waters in question was plainly set forth; and, in that map, the mouth of "The Great River" was brought to the line between *Coney Island* and *Sandy Hook*—the latter of which was thus made the point of junction of those parts of New Jersey which were "Bounded on the East by the main Sea," with those parts of the same Province which were bounded "by Hudsons River."

The value of this authority, for the determination of questions concerning "the Intent and meaning of the Parties" to this identical Grant to Carteret, may be ascertained from the fact that, in 1759, when Messrs. Stevens, Parker, and Ruth-

erford, as Commissioners from New Jersey, were engaged in the settlement of the Northern Boundary of that Province, *they* introduced both the Map and the Narrative of Mr. Ogilby to which reference has been made, as *their* principal evidence of the "understanding" of the Parties to this Release, concerning the Delaware River, and of the "meaning" of the term, employed therein, "Delaware Bay." (*MS. Brief of the Claims of New Jersey*, 39,40.)

It is a noteworthy fact, also, that both on the second and the fifteenth days of September, 1769, the three Commissioners of New Jersey, to whom reference has been made, (Messrs. Stevens, Rutherford, and Parker,) appeared before the Commissioners for determining the Northern boundary line of New Jersey, at the Long Room in the Merchants' Exchange, in the city of New York, with a copy of Mr. Ogilby's volume, which they introduced as their principal evidence on matters connected with that portion of the Boundary between the two Provinces; (*MS. Minutes of the Commissioners*, 711, 729—New Jersey Boundary Papers, iii, New York Historical Society:) it is not considered necessary, therefore, in 1865, in a renewed examination of the same *Release* by the Duke of York to Sir George Carteret, for the purpose of ascertaining the Boundary of the same "Tract of Land and "Premises," on its *eastern* front, to strengthen the character of him, who, at the time, was relied on as the chief supporter of the claims of

New Jersey, concerning her *northern* front, on the great principles which must control all others ; nor is it considered neccessary, in this place, to do more than recognize the peculiar manner in which Mr. Whitehead has treated General Cochrane's reference to Mr. Ogilby's statement ; and to express our disapproval of what seems to be its entire nnfairness, in such a discussion as this.

It will be remembered, however, that Mr. Ogilby stated in his title-page that his materials had been " Collected from the most authentick " Authorities " who had preceded him ; and, without conceding the necessity of strengthening his testimony for the purpose of this examination, the character of the current opinions of the best informed men of that period, on the subject of the waters on the western borders of Staten Island, may be learned from the writings of those " most authentick Authorities ; " and the effect of those current opinions, on the minds of both the Grantor and Grantee of New Jersey and on the terms of the *Release* itself, may be, therefrom, most certainly ascertained.

In the year 1671, Jacob Meurs, a bookseller, published in the city of Amsterdam, in Holland, a folio volume entitled *De Nieuwe en Onbekende Weereld, of Beschryving van America en t' Zuid-land* : by Arnoldus Montanus, in which a minute description of America was printed, in the Dutch language. A chapter of that volume was devoted to a description of Nieuw-Nederland ; and

the description of the waters in question is in these words : “ Onder de stroomen is *de Manhattans* of *Groote* rievier verre de voornaemste : “ als welke met twee wijde monden, bespoelende “ ’t magtig eiland *Matouwacs*, in *d’ Oceaen* uit- “ waterd. De zuidelijke mond word genaemt “ *Port May* of *Godijns Bay* : middenweegs leid ’t “ *Staeten-eiland*, en weinig hooger ’t *Manhattans*, “ alsoo genoemt na het volk, welk aen d’ oost- “ zijde der stroom ’t vaste land bewoond.” (p. 123.) [Among the streams *the Manhattan* or *Great river* is by far the chiefest, as with two wide mouths, washing the mighty island *Matouwacs*, it empties into *the Ocean*. The southern mouth is named *Port-May* or *Godyn’s Bay* : midway lies the *Staten-island*, and little higher the *Manhattans*, also named after the people, who on the east-side of the stream inhabit the main land.]

This work, which contains the well-settled opinion on this subject, of the Dutch who had settled the Province and held it for many years, is also illustrated with a carefully prepared map, exactly similar, in every respect, to that employed by Mr. Ogilby, in his volume on America, already referred to ; and there is little room to doubt that while it was the standard work on this subject in Holland, it also furnished the “ authentick” original from which the latter gentleman evidently collected a portion of his information, while he was compiling his volume.

Again : on the thirteenth of April, 1670,

while the country had been in the possession of the Duke, before its capture by the Dutch under Binckes and Evertsen, Governor Lovelace had purchased, in behalf of his royal master, the island known as Staten Island ; and it is a reasonable conclusion that the description of that property, as expressed in the Deed of Conveyance to the Duke, was expressive of the current opinion of the day, on that subject.

Fortunately for the purposes of this investigation, the original Manuscript Conveyance of the property referred to, has been preserved in the Library of the New York Historical Society; and the following, carefully copied from that original, will not fail to throw some light on this interesting subject. It was thus described in the Deed referred to :

“ All that Island-lyeing & being in Hudsons
 “ Ryver Comonly called Staten Island, & by
 “ the Indians *Aquehonga Manacknong*, having on
 “ ye South ye Bay & Sandy point, on ye North
 “ ye Ryver & ye Citty of New York on Man-
 “ hatans Island, on ye East Long Island, &
 “ on ye west ye Main land of After Coll, or
 “ New Jersey.”

Again : Doctor Peter Heylyn, whose ardent friendship for the Stuarts in their adversity, was rewarded by the King, on his restoration to the throne, by the appointment of Prebendary of Westminster, published in the year 1657, a fine folio volume, entitled “ *Cosmographie in four books* ;” and in 1669, a fourth edition of that

work was issued with the Author's last revisions and corrections, and illustrated with large maps, under the especial patronage of the King, to whom it was dedicated.

On page 96, Liber IV., of the last mentioned edition of that work, under the head of "*Novum Belgium, or Nieuw Nederlandt*," the author said, "Rivers of note they have not many. That want is supplied by many large and capacious Bays, all along the Coast. The principal of those that be, 1. *Manhattes*, by some called *Nassovius*, but by the Dutch commonly *Noordt Rivier*, which falleth into the Sea at *May-port*," [the "*Port-May* or *Godyn's Bay*" of Ogilby and Montanus,] "so called by *Corne-lius May*, the Master of a ship of *Holland*, at their first Plantation:"—information which will receive fresh importance when the peculiar relations which then existed between the author and the King and the Duke of York shall be remembered.

It will thus be seen that, in 1674, when the Duke of York conveyed to Sir George Carteret, the leading Cosmographers of the time, both English and Dutch, concurred in the opinion, that the Hudson discharged its waters through two mouths, the Narrows and the Kills; that these mouths were separated by Staten Island; and consequently, that the waters which separated Staten Island from the main were then considered only as waters of Hudson's River.

It will be seen, also, that this opinion pre-

vailed, and was fully and clearly expressed, in the formal Deed of Conveyance which was accepted by the Duke's Governor in America and by the Duke himself, when Staten Island was purchased by him, with the description, "all "that Island *lying & being* IN *Hudsons Ryver*;" and bounded on "*ye South* [by] YE BAY & Sandy "point, on *ye North* [by] YE RYVER & ye Citty of "New York on Manhatans Island, on *ye East*" [by the River "IN" which it was and] "Long Island, "& on *ye West*" [by the River "IN" which it was and] "ye Main land of After Coll, or New Jersey;" and nothing more appears to be necessary, *in the absence of any opposing evidence*, to establish the generally received opinions of the day, both in Holland and in England, concerning the character of the waters in question, when the Duke of York conveyed to Sir George Carteret, the territory which was subsequently known as East Jersey;—that they constituted the southernmost mouth of the Hudson; that, *as such*, they flowed through what was *then* known by the several names of the "Bay," "Port-May," and "Godyn's "Bay," into the ocean at Sandy-hook; and, consequently, that what we know by the term, "the Bay," or harbor of New York, as well as that which is known to us as "the "lower Bay," were and still are, *historically*, only expansions of the waters of the Hudson.

Nor was that generally-received opinion, in 1674, in accordance with which the Duke Released, and Sir George Carteret accepted, "the

"Tract of Land and Premises" which was subsequently known as East Jersey, inconsistent with other and earlier authorities, both English and Dutch: indeed, Mr. Whitehead admits, (*Number IV, ante*), that, on one of these points, at least—the name which was then given to "the lower Bay"—General Cochrane was entirely correct.

This is evident from the following, selected from "a cloud of witnesses," to whom reference might be made:

I. On the twenty-ninth of September, 1673, notice was sent from New Amsterdam to the Neversink, by Governor Colve, with an order for its publication, that, on the arrival of any ships from sea, he should be notified at the earliest possible moment. (*Minutes of the Council*, Sept. 29, 1673—*Col. Doc.* ii, 619.)

On the twenty-third of the following April, information was received "that a ship or ships have come to anchor within SANDY HOOK OF THE NORTH RIVER OF NEW NETHERLAND, Capt. Cornelis Ewoutsen is therefore hereby ordered and commanded instantly with the Snow in his command, to sail to the aforesaid Sandy Hook, to learn what ships they be," etc. (*Minutes of the Council*, April 23, 1674—*Col. Doc.*, ii, 707.)

The fact that Sandy Hook was *then* considered a portion of the territory bordering on "the North River," is not without significance, for the purposes of this discussion.

II. In the correspondence of Samuel Maverick,

one of the Royal Commissioners to New England, and better informed than most others, on the details of the Colonial affairs of that period, the following appears :

FIRST : Writing, from New York, to John Winthrop, Jr., on the twenty-fourth of February, 1669, Mr. Maverick referred to a letter which had been received from Colonel Nicolls, then in London, in which the latter had said, concerning some action relative to the boundaries between New York and New Jersey, "Staten Iland is adiudged "to belong to N: York. The L. Barkley is "vnder a cloud, and out of all his offices, and "offers to surrender vp the Patent for N. Jarsey. "Sir G: Carterett, his partner, is in Ireland, but "it is thought he will likewise surrender, and "then N. Yorke will be enlarged." (*The Winthrop Papers—Mass. Hist. Soc. Collections*, IV, vii, 315.) The "judgment," in 1668, that Staten Island "belonged to N: York," necessarily carried with it the judgment that the boundary between the two Provinces was to the *westward* of Staten Island ; and, consequently, that either "the main Sea" or "Hudson's River," which formed the only lines of limitation to the territory of New Jersey, on the east, flowed between that Island and the main :—to which of these two classes, those waters were *then* supposed to belong, has been already seen.

SECOND : . A few weeks later, Mr. Maverick wrote to the Rev. Sampson Bond, at Bermudas, and informally invited him to remove to New

York. At the same time, he informed Mr. Bond that the Governor had said, "if your selfe and "copany came, he would order yow a proportion of land (accordinge to the families you "should bringe) on an Iland called States Iland, "about 3 or 4 leagues from this cittie, the most "commodiosest seate and richest land I haue "seene in America. It is probable (if his multiplicitie of buisines will permitt it) he will lett "you know it by his owne penn. * I haue it from "his owne mouth." (*Winthrop Papers—Mass. Hist. Soc. Collections*, IV., vii., 317.)

In view of the fact that Mr. Bond was a personal friend, both of the Royal Commissioner and of the Governor of New York, there is very little probability that a tract of land would have been offered to him, which was not, *indisputably*, within the colony of New York; and the student may learn from this fact what, at least, was the current opinion on this subject, in the best informed circles in New York, in 1668-9.

III. On the twenty-third of January, 1657, Jacques Corteljou, Surveyor-General of New Netherland, petitioned the Governor and Council, in behalf of the heirs of Cornelis van Werckhoven, for leave to found and erect a village on Long Island, "AT THE BAY OF THE NORTH RIVER;" (*MS. Council Minutes*, viii, 424;) and a Patent for the territory which was then occupied was subsequently granted by the Colonial authorities. The following description of the premises is taken from that Patent: "130 morgens of valley,

"situate on Long island, at the East hook of THE
 "BAY OF THE NORTH RIVER, *opposite Coney island*,
 "bounding with the west end on the land of An-
 "thony Jansen from Salee, northeast on the Kil
 "where Gravesend mill stands, southeast and
 "south abutting on said Kil, southwest on the
 "BAY OF THE NORTH RIVER," (*MS. Records, Li-
 ber HH. Part II. Patents. Folio 90.*)

On the fifteenth of August, 1668, Governor
 Nicolls issued a new Patent for this settlement,
 in which the territory was then described: "Be-
 "ginning from Nayack-Point," [known to us as
 "Fort Hamilton,"] "stretching alongst the Bay
 "to the land belonging to Francis Bruyne, and
 "from thence run into the woods along the said
 "Francis Bruyne's land to the land heretofore
 "belonging to Robert Pennoyer, neare upon a
 "N. E. line 1200 Dutch Rods from which goe
 "again in a direct line to the North River, run-
 "ning 300 rods to the North of the whole Hooke
 "or Neck of land; and then again alongst the
 "North River to Nayack-Point." (*The Charter*,
 quoted in *Thompson's Long Island*, ii, 191.)

As "Nayack-Point" was the name given, at that
 time, to what we now know as "Fort Hamilton,"
 (*Nicolls's Map of New York. in VALENTINE'S Man-
 ual for 1863,*) it will be seen that what we now
 know as "The Bay," or harbor of New York, was
 then called "the North River;" while the waters
 which were to the east of "Nayack-Point," now
 called "the lower Bay," were then called "The
 "Bay."

On the thirteenth of May, 1686, Governor Dongan issued a third Patent, in which the bounds of the town were thus described : "Beginning at the North-East corner of land appertaining to "Mr. Paulus Vanderbeeck called *Goanus*" [Gowanus] "to the Bounds of Flattbush Pattent, "and soe along the said bounds of the said Patent, and stretching from thence South-East and "by South till they meete the Limitts of Flattlands, Gravesend, and the said Utrecht, and "from thence along Gravesend Bounds to the "*Bay of the North River*, and soe along the said "Bay and River till it meets the Land of the said "Paulus Vanderbeeck," etc. (*Dongan's Charter*, as quoted in *Thompson's Long Island*, ii, 191, 192.)

It will be seen from this instrument that as late as 1686, while Governor Dongan was at the head of the Government, the waters below Gowanus were called "THE NORTH RIVER," while westward from the line of Gravesend, our, so-called, "Lower Bay" was called "THE BAY OF THE NORTH RIVER."

Those who are curious to pursue the enquiry concerning the name of "BAY OF THE NORTH RIVER," as applied to our, so-called, "Lower Bay," will find other examples of its use, in the *Certificate of Governor Stuyvesant's farmers*, Aug. 14, 1666—*Colonial Documents*, ii, 474;—in the description of Van Dicklagen's purchase on Staten Island, August 5, 1650; (*Whitehead's History of East Jersey*, 19;) in Cornelis van

Tienhoven's *Information relative to taking up land in New Netherland*, March 4, 1650 ; (*Colonial Documents*, i, 366;) in his *Observations on the settlement of the Boundary*, etc., February 22, 1650 ; (*Colonial Documents*, i, 361;) in the Patent of land in Gravesend, "on the Bay of the North River, on Long Island, over against Conyne Island," to Anthony Jansen from Salee, May 27, 1643 ; (*MS. Records*, Liber GG. *Patents*, Folio 61;) etc.

IV. On the twenty-ninth of October, 1661, Peter Stuyvesant presented to the States-General, an answer to certain "*Observations of the West India Company on his Report of the surrender of New Netherland*," in 1664. In that answer, he minutely described the measures which had preceded the surrender, in the course of which he said : "Peter Alricks, the city's Commissary, was sent as early as May to the Manhatans from the city's Colonie of New Amstel" [*Newcastle, Del.*] "to purchase some provisions and cattle. These were not to be had in New Netherland ; accordingly, having bought up in June and July a lot of cows, oxen, and sheep in New England and on the East end of Long Island, he had in the absence and before the return of the Petitioner from Fort Orange, conveyed the greater portion of them ACROSS THE NORTH RIVER FROM LONG ISLAND TO NEUWESINKS, distant the one from the other about 2 @ 3 leagues, and for the security of the aforesaid cattle put them under the care of some farmers and farm-

"servants and a few soldiers from the Colonie of
"New Amstel." (*Answer of the Hon. Peter
Stuyvesant, etc.—Colonial Documents*, ii, 433, 434.)

V. On the last of February, 1664, the Director-general and Council of New-Netherland wrote to the Chamber at Amsterdam, concerning the aggressions of the English, "In our last, by
"the ship *St. Jacob*, duplicate whereof accompanies this, we have stated and plainly shown,
"among other things, that although we should
"cede Westchester and the English towns on
"Long Island to the colony of Hartford, it would
"not satisfy the latter. The proof and effect
"thereof manifested themselves shortly after the
"dispatch of our letter; for, some English both
"from the East end of Long Island and from
"Gravesend, DID SECRETLY CROSS OVER THE NORTH
"RIVER TO THE NEWESINGS," [Neversink] "lying
"behind Rensselaers hook, and there endeavored
"to purchase a tract of land," etc. (*Letter*, dated
"the last of February, 1664"—*Colonial Documents*,
ii, 231.)

The fact that the "North river" was considered, in 1664, as flowing down *as far as Sandyhook*, will be evident to every one who bears in mind that the waters which were "crossed" by Peter Alricks and his live stock and by the English land-speculators, in that year, to which reference is made in the preceding paragraphs, were what we call "the lower Bay," which separates Gravesend and New Utrecht, on Long Island, from the Neversinks, in New Jersey—

facts which throw great light on this important subject, and indicate with remarkable clearness, that the opinions which prevailed at a later day, concerning the mouth of the Hudson River, were also the well-settled opinions of the best informed Colonists, as early as 1664 and 1666.

VI On the eighth of April, 1665, Governor Nicolls made a Patent for lands at Neversink, of which the following is the description: "All that Tract and Part of the main Land, beginning at a certain Place commonly called or known by the name of Sandy Point, and so running ALONG THE BAY West North West, till it comes to the Mouth of the Raritans River," etc. (*Monmouth Patent*, dated April 8, 1665—*Leaming & Spicer*, 661.)

Those who are curious to pursue the enquiry concerning the use of the term, "The Bay," as applied to what we term "the lower Bay," will find other examples in Director Stuyvesant's letter to Messrs. La Montagne and van Rensselaer, Aug. 29, 1664—*Colonial Documents*, ii, 372; in *The Register of the Principal events which occurred in the Attack and Reduction of New Netherland*—*Colonial Documents*, ii, 410; etc.

VII. About the year 1656, was published in Holland, a map entitled, *Novi Belgii novæque Angliæ nec non partis Virginicæ multis in locis emendata a Nicolao Joannis Visschero*.

On this map is minutely depicted "Nova Belgica sive Nieuw Nederlandt," in all its parts; and the student will find on it, *no name what-*

ever for the *Hudson River*, EXCEPT AT ITS MOUTH. Our "lower Bay," so-called, is called on this map "Port-May of Godyns Bay"—the term used for the southernmost mouth of the Hudson, by Ogilby, and Montanus, and Heylin—while OUTSIDE of this inscription concerning the Bay, between Sandy-hook and Coney-Island, where the mouth of the river was then supposed to be, is inscribed these words :

"Groote Rivier at { *Manhattans R.*
Noordt Rivier
Montaigne Ri
Maurits Rivier."

The weight of this authority may be ascertained from the fact that even in Holland, as early as 1656, it was employed as an exhibit, in an important case ; (*Brodhead's History of New York*, i,); from the fact that on the fourteenth of September, 1769, it was introduced among the leading testimony, in the case of the Northern boundary of New Jersey, before the Court of Commissioners appointed to consider that subject ; (*MS. Minutes of the Court*, Sept. 14, 1769—*N. J. Boundary Papers*, iii, 709. N.Y. Hist. Society's Library;) and from the fact that that Court, in its judgment in the case, expressly referred to it, and depended greatly on its testimony. "We further find, among the many "Exhibits," said the Court, "*a Certain Dutch Map, Compiled by Nicholas John Vischer, and published not long before the aforesaid Grant from the Duke of York, which we have Reason*

"to believe was *Esteemed the most correct Map of that Country at the Time of the said Grant*;" (*MS. Minutes of the Court*, October 7, 1769—*N. J. Boundary Papers*, iii, 706, N. Y. Hist. Soc. Society's Library.)

VIII. In 1656, Evert Nieuwenhof of Amsterdam, published a small quarto volume entitled : "*Beschryvinge van Nieuw-Nederland*. * * * "*Beschreven door Adriaen vander Donck*;" and this volume is illustrated with a map *exactly similar, in every respect, save its extent*—being limited to the territory of New Netherland—to *that which bears Nicholas Visscher's name*, and which has been already described. As in the latter, there is no name inscribed along the line of the Hudson River, to designate its title ; "Port-May of Godyns-Bay," the names applied by Ogilby, Montanus, Heylin, Visscher, etc., to the southernmost mouth of the Hudson, are repeated in this ; and the five names of the river, at its mouth, are as fully set forth on this map as on that of Nicholas Visscher ; and the approval of that map by so intelligent a Colonist as van der Donck, gives fresh value to it and stamps it with the highest contemporary authority.

The importance of the testimony, on this subject, which has been furnished in the original edition of this ancient and well-known map, warrants a notice of the action concerning it, of The New Jersey Historical Society, and the entry of an earnest protest against what seems to have

been a violation of the Records, on this subject, by that distinguished body.

In the first volume of the *Collections* of that Society, what purports to be a copy of a section of this map has been introduced as the frontispiece of Mr. Whitehead's *East Jersey under the Proprietary Governments*; but, while the words "Port May of Godyns Bay" have been VERY DISTINCTLY inserted in the proper place, the names of "THE GROOTE RIVIER," OUTSIDE of the former, have BEEN STUDIOUSLY OMITTED; and van der Donck has been FORCED to say nothing whatever concerning the Hudson, either at its mouth at Sandy-hook, or elsewhere.

Whether considered, to some extent, at least, as parties in interest in this long-continued and closely contested controversy, or simply as conservators of the Truth of History, it would have been more consistent with propriety and its duty, had The New Jersey Historical Society avoided even the appearance of unfairness. No one will deny, however, that in this peculiar mutilation of the *original* Map of van der Donck, this learned and influential body, has quailed before the testimony, on this subject, which it has presented; while it is not less evident that, as a conservator of the Truth of History, it has manifested, by this action, its entire unwillingness to follow the Truth, on this question, whithersoever she may lead it.

IX. In 1655, was published in London, a small volume entitled, "*America, or an exact*

"*Description of the West-Indies* : * * Faithfully represented by N. N. Gent ;" on pages 265-270 of which is a description of "*Novum Belgium, or Nieu Nederlandt*."

On page 269 of this work appears the following : "In stead of Rivers, which this Country seemeth a little to want, there are many large and capacious Bayes all along the Coast : the principall whereof are, that which the Dutch call *Nassovius-Bay*, SOMETIMES THE NORDT-RIVER, WHICH FALLETH INTO THE SEA AT MAY-POR T"—a statement which is exactly parallel with those which were made by all the leading authorities of that period, both Dutch and English.

X. In November, 1653, the West India Company addressed a letter to the States General, to which was appended a "*Description of the boundaries of New Netherland*," which had been written in February, 1651, in which occurs these words : "Immediately after obtaining the Charter, the Honble Directors sent divers ships to New Netherland with people and cattle, which people being for the most part servants of the aforesaid Company, purchased many and various lands ; among others, ON THE NORTH, (*alias Maurice*) RIVER, STATEN ISLAND, *Pavonia*, Ho-boocken, Nut Island, and the island of Manhattans, with many other lands thereabouts," etc. (*Letter dated "the last of February, 1651"—Colonial Documents, i, 542.*)

XI. In another part of the same *Description*,
16.

the author of it, who is supposed to have been Peter Stuyvesant, the Governor of the Colony, remarked: "*I insist that the boundary of New Netherland along the sea coast, should be calculated from the South bay, beginning at Cape Hindlopin, and including the South river, unto Godyn's point,*" [Sandy-hook,] "*being the South-hook of the North Bay, or BEGINNING OF THE NORTH RIVER,*" etc. (*Ibid—Colonial Documents*, i, 544.)

In view of the fact that this *Description of the boundaries of New Netherland* was probably written by Peter Stuyvesant; that it was adopted by the West India Company; and that it was presented by that Corporation to the States General, too much importance cannot be attached to the evidence which it affords in the question concerning the spot, on the eastern boundary of New Jersey, where "the main Sea" terminated and "Hudson's river" began; and, incidentally, for the determination of the character of those waters which separated Staten Island from the main.

XII. In the *Remonstrance of New Netherland and the occurrences there*, addressed by Adriaen van der Donck, Augustyn Harman, Jacob van Couwenhoven, and others, delegates from the Colonists at New Netherland to the States General, on the twenty-eighth of July, 1649, it is said: "TO THE EAST OF THE NORTH RIVER LIES LONG ISLAND, about 40 leagues in length," etc. (*Remonstrance, etc.—Colonial Documents*, i. 276.)

In view of the fact that, in 1649, a delegation

from the Commonalty of New Netherland, embracing some of the most intelligent and influential of the Colonists, considered that the North river washed the western shore of Long Island, the subsequent testimony, to the same effect, of Ogilby, Montanus, Heylin, Visscher, and Governor Lovelace is made more trustworthy, since it clearly shows that the latter were not ignorant of the well-considered opinions on that subject, of those residents in the Colony who were best acquainted with it.

It is worthy of remark, also, in this connection, that, on the twenty-third of December, 1667, when Governor Nicolls granted what we call Bedlow's Island to Robert Needham, it was described as "*lying and being in Hudson's river TO THE WEST OF LONG ISLAND;*" (*Patent*, quoted by the Commissioners from New York, Sept. 28, 1807.

XIII. On the tenth of September, 1645, a deed was executed by certain Indians, for lands in Gravesend, which were thus described: "Land "on Long island from Kynen "[Coney]" island to "Gouwanes ALONG THE NORTH RIVER, and from "the same island along the sea-shore to Wey- "wittsprittner" etc. (*MS. Records. Liber GG. Patents, Folio 52.*)

The shore line of Long island, from Coney island westward to Gowanus, was thus described as "ALONG THE NORTH RIVER:" and it is evident therefrom, that, as early as 1645, that river was

supposed to flow into the ocean between Sandy-hook and Coney Island.

This mass of testimony, concerning the lower waters of the Hudson, has been introduced for the purpose of illustrating, as far as that can be done, what was "the Intent and Meaning," on that subject, of the Duke in conveying, and of Sir George Carteret in accepting, in 1674, "the Tract of land and premises" which is known to us as East Jersey.

It is a recognized mode of ascertaining "the Intent and Meaning" of the parties to such an Instrument as the Lease and Release of July, 1674, to inquire what was the generally received opinions of competent persons, at the period of the execution of the Instrument, on such subjects as that which is now in dispute; and when those opinions can be sustained, *as these have been sustained*, by the concurrent testimony of the preceding thirty years, from both Europe and America, it may be reasonably claimed that, *in the absence of any contrary evidence*, the sense of the terms employed has been correctly ascertained.

For this reason, therefore, it may be said with reasonable confidence, that, in 1674, the Hudson river was considered by all intelligent, well-informed persons, English, Dutch, and Americans, as flowing on *both* sides of Staten-island and into "the main Sea" at Sandy-hook; that in that sense the term, "and part by Hudson's River," was employed in the Grant to Sir

George Carteret; and that in that sense alone, considered *historically*, should the waters which separate Staten-island from the main, be now considered.

The "Intent and Meaning" of the two parties to the Release of July 29, 1674, concerning the subject under discussion, having been illustrated by the testimony of the best informed men of that period, both in Europe and America, and by that of the most intelligent Colonists and the most eminent scholars during the thirty years which preceded the execution and delivery of that Instrument; it is proposed to illustrate the subject still further, by an examination of the action thereon of both the parties to that instrument and of their common Sovereign, subsequent to its execution and delivery, and subsequent to the occupation of their respective territories, by the Duke and Sir George Carteret.

I. On the thirty-first of July, 1674—three days after his acceptance of the Duke's Release, Sir George Carteret executed and published certain *Directions, Instructions, and Orders to be observed by the Governor and Council, and Inhabitants of New-Cæsarea or New-Jersey*, in the recital of which he described his territory as "bounded on the East Part by the main Sea, "and Part by Hudson's River," in the exact and very plain words of the Duke's Release, to which reference has been so often made. (*Directions, etc.—Leaming and Spicer, 50.*)

II. On the first day July, 1676, Sir George

Carteret entered into an agreement with the assigns of Lord John Berkeley, for the partition of the joint property of the two, if any there was, in the lands now known to us as New Jersey ; and on the same day, what has since been known as a "Quintipartite Deed," was executed by the respective parties, embracing the terms of that agreement.

In that "Quintipartite Deed," the bounds of the territory assigned to Sir George Carteret—the same which the Duke of York had Released to him, in July, 1674—were thus described :—
 "Extending Eastward and Northward ALONG THE
 "SEA COAST AND THE SAID RIVER CALLED HUDSON'S
 "RIVER ; from the East side of a certain Place
 "or Harbour lying on the Southern Part of the
 "same Tract of Land, and commonly called or
 "known in a Map of the said Tract of Land,
 "by the name of Little Egg Harbour, to that
 "Part of the said River called Hudson's River,
 "which is in Forty One Degrees of Lattitude,
 "being the furthestmost Part of the said Tract of
 "Land and Premises which is bounded by the
 "said River," etc. (*Quintipartite Deed*, dated July 1, 1676—*Leaming and Spicer*, 67.)

It will be seen that Sir George Carteret, in both the *Directions*, etc. and in the Deed which have been referred to, recognized the important fact that his territory was bounded, on its Eastern front, *only* by "the Sea-Coast and the River "called Hudson's River ;" and, consequently, that where "the Sea-Coast" ended, on the line

of that boundary, "the River" began; that there were not *then* considered any other bounds to East-Jersey, on the East, than those two classes of waters; and that the distinctive claims in behalf of "the Raritan," "the Sound," "the Kill van Col," etc., as such, had not yet been brought into existence.*

The great weight of this very important feature in the early descriptions of the Eastern boundary of East Jersey, was apparent to the learned Commissioners from New Jersey, on whom devolved the duty of determining the boundary, and who discussed the subject with so much ability, in 1807; and they were not slow to take advantage of the arguments of their opponents, from New York, based on an imperfect knowledge of the subject, which seemed to disregard it. With a clearness of statement which might

* The same description of the Eastern boundary of the territory of the Province may be seen in the *Deed* made by Messrs. Cremer and Pocock, Dame Carteret, and the Trustees under Sir George's will, to William Penn and others, February 2, 1683,—(*N. J. Boundary Papers*, iii, 185—N. Y. Hist. Soc. Library;) in the *Release* by the Duke of York to the twenty-four Proprietors, March 14, 1683, (*Leaming and Spicer*, 141-150) in the King's Letters Patents, recognizing the Proprietors' Rights to Soil and Government, November, 23, 1683; (*Ibid*, 151, 152) and in the Articles of "Surrender from the Proprietors of East and West Jersey" of their pretended Right of Government, to Her Majesty," April 15, 1702, (*Leaming and Spicer*, 609-615). It is evident that the effects which attended the same description, in the earlier papers, also attended each of these; and as they have been properly considered evidences of the views of the makers of those Instruments, as well as those of the Acceptors thereof, each of these, also, may justly be considered in the same light as witnesses against the arguments of Mr. Whitehead and of those who concur in his opinions.

have been expected from such intellectual giants as Aaron Ogden, Alexander McWhorter, William S. Pennington, James Parker, and Lewis Condict, they submitted to their opponents, as a preliminary question, "whether it must not be intended " that the Duke considered *the Hudson's river ending at the point where the main sea commenced*, " or otherwise can it be intended that he meant " *to leave a chasm in the line of the eastern boundary of New Jersey?*" They also gave four reasons for holding that the Kill van Col was not " intended by the Duke as part of the *main Sea* ;" (*Aaron Ogden and others to Ezra L' Hommedieu, Egbert Benson, and others, October 5, 1807 ;*) and they clearly and forcibly insisted, as the waters which separated Staten Island from the main, were not " intended as part of the main sea," that both the island and the waters in question belonged to New Jersey, since the Duke could not have " meant to leave a chasm in the line of " *the eastern boundary of New Jersey.*" Their opponents, on the contrary, failed to take advantage of those points which a proper understanding of the history of the subject would have enabled them to have seized ; and, unfortunately for their State, they tacitly admitted that the waters in question were not waters of the Hudson, and, consequently, that both the waters and the Island were westward from " Hudson's " River," and, therefore, portions of the territory of New Jersey.

The argument of the Commissioners from New

Jersey, thus seconded by the unpardonable mistake of those from New York, would have been irresistible, and both the waters and the island would have been lost to New York, had not her Commissioners summarily closed the negotiations by an arbitrary refusal to entertain the principal claim which was made by those from New Jersey. (*Correspondence between Aaron Ogden and others with Ezra L'Hommedieu and others*, October 6 and 7, 1807.)

It is equally fortunate, for the purposes of this discussion and for the defence of the Truth of History, that much of the light which was withheld from the Commissioners of 1807 and 1834, has been placed before the world, within the past few years ; and, from the State Paper Offices in both Europe and America, and from the collections of the several zealous students who have recently honored themselves and given fresh interest to the memorials of the Past, the present generation has been enabled to learn more of the Truth and to ascertain, with greater certainty, more of the groundworks of the errors by which their predecessors were so sadly encumbered, than any which has preceded it.

III. On the twenty-third of September, 1675, Governor Andros of New York, issued a Warrant to the Constable of Staten Island, for taking up some swine belonging unto Governor Philip Carteret, which had been "forc't into the water " or by some other accident are swum over from "the point of land by after Cull river to Staten

"Island ; the said Hoggs or Swine which Swum
 "over, having his knowne marke :'' (*Warrant*,
 etc—*MS. Records*, Secretary of State's Office,
 Albany;)—an evidence that the Duke's Governor,
 at that early day, considered the Island to be a
 part of New York ; and, consequently, eastward
 from the waters of either "Hudson's river" or
 "the main Sea," on its western borders, which,
 alone, formed the Eastern bounds of East-Jer-
 sey, by the terms of the Release.

IV. On the twenty-fifth of March, 1676, a grant
 was made by Governor Andros to Captain
 Christopher Billop, of a "Certaine Parcell or
 "Tract of land within a Neck upon Staten
 "Island, * * * * * lying and
 "being on the South-west side of the said Island,
 "beginning on the North side of a Creeke which
 "lyes over against the Land belonging to Mr.
 "Gabriel Minvielle in the Province of New Jer-
 "sey so running with the west side alongst the
 "Great Kill to THE BAY then forward with the
 "South side alongst the said BAY to the East side
 "of a great Pond," etc. (*Patent and Confirma-
 tion*, March 25, 1676.)

In *A Short Accompt of the Generall Concerns of
 New Yorke from October 1677*, (*Colonial Docu-
 ments*, iii, 257) under date of "November ye
 "16th," in the latter year, appears the following
 entry : "the Governor" [*Andros*] "parted from
 "New Yorke, and went to take his leave of Gov-
 "ernor Carterett in New Jersey, & lay there all
 "night ; the 17th went aboard neare Staten Is-

"land, weyed & went down IN YE BAY NEAR
"SANDY POINT, whence hee sayled."

Reference is made to these subjects for the purpose of showing the continued use of the term "BAY," after the date of the Duke's Release and before Sir George's death, in 1679.*

V. Among the *Acts of the General Assembly at Elizabeth-Town, the third day of April, 1679*, was one ordering the levy, "in a Country Rate," of one hundred and fifty Pounds, "to lye in Bank for the Encouragement of any Vessel to come into the Province to Traffick and Trade

* It is clearly evident that that use of the term was continued to a much later period. This will be seen from the following, selected from a number of examples:

The fourth Chapter of the Laws passed by the General Assembly of East-Jersey, which met at Perth-Amboy, on the twelfth of October, 1693, provided for the division of each County of the Province into Townships; and the township of Middletown was thus described, on that occasion: "In the County of Monmouth the Township of *Middletown*, includes all the Land from the Mouth of *Neversinks* River, and runs up the said River and *Swiming River*" * * * "thence to the head of *Matavan*, "thence to the head of *Chesqueack* Creek, thence down said Creek to THE BAY, thence round along Shore to where it begun," at the mouth of Neversinks River. (*Seaming and Spicer*, 330).

After the surrender of "the pretended Right of Government" to the Crown, in 1702, the same names of Counties were continued; and in the General Assembly of New Jersey, January 21, 1709-10, another Act for dividing and ascertaining the Boundaries of all the Counties in this Province was passed. In that Act Monmouth County is described as beginning "at the Mouth of the Creek aforesaid, that parts the Land of Captain Andrew Bowne, deceased, and George Willocks; * * * thence Southerly along the said Division Line" [of the Eastern and Western Divisions of the Province] "TO THE SEA; thence ALONG THE SEA to the Point of Sandy-Hook; thence up THE BAY to the aforesaid Creek where it first began." (*Acts of the General Assembly*—Allinson's Edition, 12).

“with Money;” the disposition of which tax was to be made by a Committee to be chosen for that purpose, and approved by the Assembly. (*Act, etc—Leaming and Spicer, 131.*)

It is evident, however, that that body soon discovered that the trade which it coveted would probably be made only with Elizabeth-Town ; in which case the vessel would be compelled to approach her Port, either through the waters which are the subject of this discussion, or by way of the Narrows and the Harbor of New York, concerning the latter of which, New Jersey has graciously forborne to make any claim whatever, affecting the question under consideration.

In the latter case, it was evident, also, that the adventurer would be legally subject to the payment of Customs, etc., at the city of New York : in the former, when the harbor of New York would not be entered, and no other waters than those of what are now known as “The Lower Bay” and “The Sound” would be touched, no one, of course, but *the Proprietor of those waters* could legally take notice of the passage over them, of the enterprising respondent to New Jersey’s youthful aspirations for a foreign trade.

The action on this subject, illumined with the light of that early day and stimulated with the commercial incentive to which the Act referred, of the Colonial Assembly of East-Jersey, in this contingency, possesses the greatest interest ; and whomsoever it recognized at that time, as the sole

Proprietor of those waters, may be considered, to some extent, at least, entitled to enjoy that honor. If Sir George was that Proprietor, the vessel and her cargo would have been perfectly safe from all interference in her passage through "Godyns Bay" and "The Sound" to Elizabeth-Town; and no provision was required to indemnify the Captain for the passage of his vessel through these waters to his destined Port, the Capital of East-Jersey: if, on the contrary, the waters through which the vessel must pass on her way to Elizabeth-Town, belonged to the Duke of York, as portions of his Colony of New York, the trade through those waters would be a violation of the Laws of that Colony; and the Duke's servants might rightfully seize the vessel and her cargo on charges of smuggling; and both the property might be confiscated and the crew punished. What, then, did the Colonial Assembly of East-Jersey do in this matter?

Simply this; and "nothing more." It reviewed its action concerning the proposed Committee for the "Encouragement of Traffick and Trade" in the Province; and it passed a second Act, reciting the terms and purposes of the Levy ordered in the former Act, and providing "That
 " if any one Vessel or Ship shall come into the
 " Province of New-Jersey, BY WAY OF SANDY-
 " Hook, and shall do and perform *such Duties as*
 " *is proper to be done and performed, in the said*
 " *Province, viz. : Enter and Clear in His Maj-*
 " *esty's Custom-House, which is at the Govern-*

“or’s House in Elizabeth-Town, where is the
 “King’s Customer and Collector of New-Jersey,
 “any one Vessel so going out as aforesaid BY
 “SANDY-HOOK, *the said Vessel should be by any of*
 “*the Government of NEW-YORK arrested, detained,*
 “*and condemned, and bona fide made PRIZE of,*
 “for the only Cause of Trading in this Province,
 “and not entering and clearing at New-York,
 “although entered and cleared as aforesaid mentioned,
 “in this Province, *that then this said One hundred*
 “*and Fifty Pounds shall be improved FOR THE*
 “REPARATION OF ANY SUCH VESSEL, *according to*
 “*the true Valuation of the same.”* (Acts, etc.—
Leaming and Spicer, 131, 132.)

It will be seen that no attempt was made, or to be made, to protect the vessel, or to defend her enterprizing officers before the Prize Court which should adjudge the case: no assertion of a Proprietary right in Sir George Carteret, to those waters or any of them, was made nor insinuated: the possibility of a seizure of the vessel, by “any of the Government of New York,” for a violation of the local laws of New York, which were operative only within the territory of New York, was recognized without complaint or dissent: and provision was made “for the Reparation of any such vessel, according to the true Valuation of the same,” with the most perfect good temper imaginable—a degree of resignation to an unavoidable fate, which was consistent only with a corresponding knowledge on the part of that Assembly and of Sir George Carteret and

his servants, that resistance to that fate would be useless ; that the jurisdiction of the Duke and his servants, over those waters, was unquestionable ; that they had not been conveyed to the former, in the Duke's Release ; and that they were then, as they are now, historically, part and parcel of New York.

This recognition of the character of the waters in question was not interrupted until the tenth of September, 1680—more than a year after the passage of this Act by the Assembly of East-Jersey—when, “for and in Consideration of a “competent Sum of lawfull English Money, vnto “his said Royll Highs. in hand payed,” the Duke of York “granted, bargained, sold, and confirm- “ed” unto Sir George Carteret, “the Grandson “and heire” of the first Grantee of the Province, “THE FREE USE OF ALL BAYES, RIVERS, AND “WATERS, LEADING UNTO or lyeing between the “said Premisses,” [*of East Jersey*] “or any of “them, in the said parts of America, FOR NAVIGA- “CON, FREE TRADE, FISHING, OR OTHERWISE:” (*Duke of York's Release to Sir George Carteret*, the younger, September 10, 1680—*N. J. Boundary, Papers*, iv.)—the best of evidence concerning the recognized Proprietary of those “Bayes, “Rivers, and Waters *leading unto*” the only port which East-Jersey then possessed, prior to September, 1680 ; and not less useful in determining the person in whom the *ownership* was continued, after that date, subject only to the easement which had been purchased by the

younger Sir George Carteret, "for Navigation, "free trade, fishing, or otherwise."

It is proper to notice, in this place, the License which, on the fourteenth of February, 1678, was granted to Joseph Hunt and others, by Governor Carteret, of New Jersey, giving to them "free "leave and liberty, to take or kill any whale or "whales, or such like great fish, whether at sea, "or in any creek or cove between Barnegat and "the easternmost parts of this Province." (*Records, Proprietor's office, Amboy.* Book III, 152.)

This License has been used as evidence of the action of New-Jersey, at an early day, concerning the ownership of the waters in question, and in proof of an averment, on the part of Sir George Carteret's servants, of his rights therein; but there seems to be but little ground for any such pretension. No one has ever pretended that any "cove or creek between "Barnegat and the easternmost parts of the "Province" was anything but a part and parcel of "the Tract of Land and Premisses," which had been conveyed to Sir George, in the Release of July 29, 1674; nor can it now be pretended, with any reason, that those "coves or "creeks," or any of them, were not part of the "Appurtenances" to that "Tract of Land and "Premisses" which were legally conveyed to Sir George, on that occasion. At the same time, it is equally evident that the waters between Sandy-Hook and Constable's Point, whether known as "Hudson's River," or "Godyns Bay,"

or "The Bay," or "The Bay of the North River," or "Raritan Bay," or "The Sound," or "The Kills," or "The Kill van Col," or "The North River,"—by all of which names they have been known—could not then, nor can they now, be styled or considered, with any reason, either "a cove" or "a creek," or "at sea;" and no reason exists, nor can exist, for introducing the terms of that License, as evidence, in the present discussion, nor in any other, relative to the particular subject now under consideration.

Nor is it less evident that much light may be thrown on this subject, from the contingent Grant of land on Staten Island,—“in case Staten-island falls within this Government”—which was included in a similar grant for fishing, made to John Ogden and others, on the fifteenth of February, 1668; (*MS. Records of the Proprietors of East Jersey*, Liber, iii, Folio 22;) as well as from the omission of that clause from similar Grants, after "Staten Iland had been adjudged to be long to N: Yorke," in 1669; (Compare the last named entry in the *Records*, with *Samuel Maverick's letter to John Winthrop, Jr.*, Feb. 24, 1668–9, and with the *License for fishing, granted by Governor Carteret*, Feb. 14, 1678,—*MS. Records of the Proprietors of East Jersey*, iii, Folio 152.)

It is very clear that, during the former occupation of New Jersey, jointly, by Sir George Carteret and Lord John Berkely, a claim had been made for Staten-island; that, subject to the contingency of an adverse decision in the case, portions of it

were granted to John Ogden and others, as before stated ; that, at a subsequent date, it was duly "adiudged to belong to N: Yorke ;" and that, thenceforth, Sir George made no pretensions thereto, and made no conveyances of lands or privileges thereon. Indeed, from the date of the Duke's Release, (July 29, 1674,) until that of Sir George's death, (January 14, 1679,) no question, whatever, appears to have been raised by him, nor those who acted under his authority, concerning the ownership of either Staten-island, of the waters which separate it from the main, or of the Company's farm at Ahasimus ; (*Gov. Dongan to the Earl of Perth*, Feb. 13, 1685—*Colonial Documents*, iii, 354;) and this significant fact is entitled to great weight in the examination of this subject.

Of all persons then living, except the Duke of York, Sir George was the most competent to judge of "The Intent and Meaning" of the parties to the Release of July 29, 1674 ; and as he lived upwards of six years without discovering that Staten-island, and the Company's farm, and the waters between the island and East-Jersey were his property, and died (January 14, 1679) without disposing of them, and without attempting to do so, it may reasonably be inferred therefrom, that the terms of the Release, *as he understood them*, had vested no property in the premises referred to, in him, or in his heirs.

VI. It is said that Sir George left a will, in which he appointed his wife, Dame Elizabeth

Carteret, his executrix, and, John, Earl of Bath, and five others, Trustees "to sell his property for "the Payment of his Debts and Legacies;" (Recital in the *Duke's Release to the Earl of Perth and others*, March 14, 1682-3—*Leaming and Spicer*, 145;) that those Trustees, on the sixth of March, 1679-80, "conveyed the said Premises, amongst "other things, to Thomas Cremer and Thomas "Pocock;" (*Ibid*;) that, on the second of February, 1682-3. Messrs. Cremer and Pocock, in connection with the Executrix and Trustees, granted and conveyed to William Penn and eleven others "all the said Premises called East New-Jersey;" (*Deed*, dated Feb. 2, 1682-3—*New Jersey Boundary Papers*, iii, 185;) that William Penn and his eleven associates subsequently "conveyed one Moyety of the said Tract of Land called "East New-Jersey and of all other the Premises," to James, Earl of Perth, and eleven others; (*Deed*, etc—*Leaming and Spicer*, 146;) that "for "and in Consideration of a competent Sum of "lawful English Money," the twenty-four proprietors subsequently purchased from the Duke of York, *what the latter had already sold to the younger Sir George Carteret, as already stated*,—all the right of Government in East Jersey, which had been exercised or claimed by the Duke and, in his behalf, by his servants in New York, together with a right to *navigate*, for *commercial* purposes, and to fish in, "all Bays, Rivers, and "Waters leading into or lying between the said "Premises, or any of them;" (*Ibid*, 146, 147,)

—and, on the fourteenth of March, 1682-3, a formal Release, promising those Rights to the Earl of Perth and his twenty-three associates, was duly executed. (*Release, etc—Leaming and Spicer, 141-150.*)

It is worthy of notice that it was during this period, between the death of Sir George Carteret and the perfection of the title to the Province, of the twenty-four Proprietors, that the claim for Staten-island and the Company's farm at Ahasimus was renewed ; but it is also worthy of notice that the invalidity of that claim was carried on its face ; and rendered it the more contemptible.

The fact is indisputed, that, subsequent to the date of the Duke's Release, Sir George Carteret made no claim for either Staten Island, or the waters adjacent thereto, or " the Company's " farm ;" that he died in January, 1679 ; that he bequeathed all his property in America, to the Earl of Bath and others, as Trustees, to be sold for certain, specified purposes ; and that, on the sixth of March, 1679-80, those Trustees sold all the property referred to, to Messrs. Cremer and Pocock, by whom it was held until the second of February, 1682-3, when they re-sold it to William Penn and others. The value of a claim to property in Staten-island, which was set up for the first time, *on the twenty-eighth of March, 1681, BY DAME ELIZABETH CARTERET ; (Dame Elizabeth Carteret to James Bollin, Secretary, March 28, 1681 ;)* as well as that of the demand therefor, in

HER behalf,* which was made by Governor Carteret, on the twenty-first of July, 1681, on the basis of the Duke's illegal Grant of New Jersey to *Berkeley and Carteret*, in 1664; (*Governor Carteret to the Governor of New York*, No. 1, July 21, 1681.) may be readily ascertained; nor will it require much more trouble, in view of these facts, to ascertain the worthlessness of a similar claim which was also set up, IN BEHALF OF THE SAME PERSON, on the basis of the *Duke's Release to the younger Sir George*, dated September 10, 1680; (*Governor Carteret to the Governor of New York*, No. 2, July 21, 1681;) the Dame, in any capacity, having never possessed any right thereto; and all the rights which her husband had possessed therein, if any, having been legally conveyed by his legatees to Messrs. Cremer and Pocock, two years before, in accordance with the terms of his will. The only explanation which can be offered for so remarkable an attempt, on the part of the Dame, to obtain what, in any event, belonged to other persons, is her extreme covetousness; another notable instance of which was displayed in her "frivolous Pretences" to the possession of "the House belonging to the "Proprietors," at Elizabeth-Town, which so much annoyed the twenty-four Proprietors, about the

* "You are to lay claim to Staten Island as belonging to us, according to his Royal Highness's Grant, and "also the farm at Horsemus, and to take it in possession "for MY use." (*Letter of the Dame to James Bollin*, March 28, 1681.)

same time. (*Instructions to Governor Lawrie*, 5th Month. 20th 1683.—*Leaming and Spicer*, 177.)

VII. On the first day of March, 1682-3, a General Assembly convened at Elizabeth-Town, in East Jersey ; and soon after, “ having taken into Consideration the necessity of dividing the Province into respective Counties, for the better governing and settling Courts in the same,” it passed AN ACT to divide the Province into four Counties, from which may be learned, definitely, what was *then* considered, by Sir George Carteret’s successors, the territory and boundaries of East-Jersey.

In this very important Act, FIRST, no claim whatever was made to any portion of the waters which flowed on the eastern borders of the main land ; nor was Staten Island alluded to, in any of its provisions ; and, SECOND, Bergen County was thus described : “ *Bergen County to contain all the Settlements BETWEEN HUDSONS RIVER AND HACKINSACK RIVER, BEGINNING AT CONSTABLES-HOOK, and so to extend to the uppermost bound of the Province Northward between the said Rivers.*” (*Act, etc.—Leaming and Spicer*, 229.)

The careful student will observe that this Act embraced a description of all the Territory which the Assembly of East-Jersey *then* considered as belonging to the Proprietors of that Province ; and as Staten-island, and, consequently, the waters in question, were not embraced in its provisions, it is a fair inference that neither of these

were then supposed to form portions of their Territory. There is, however, a more interesting feature in this Act, which tends still further to the establishment of the opinion, concerning the Hudson river, which was entertained by that very early Assembly of East-Jersey.

Bergen County was said, in the Act under consideration, "to contain all the Settlements *between Hudson's River and Hackinsack River*," from "*Constable's-Hook to the uppermost bound of the Province, Northward between the said Rivers*:"—any map of New Jersey will show that "*Hudson's River*" was thus formally recognized, as far to the Westward, as the entrance to the Kill van Col, at least; and if Mr. Whitehead's *Map of the settled portion of East Jersey, about the year 1682*, with which he has illustrated that period of his History of East-Jersey, (page 88,) may be relied on, which, for the purpose of this discussion is assumed to be the case, this Act recognized the waters of the Kill van Col, as "*Hudson's River*," as far Westward as the entrance to the Achter Col, or Newark Bay.

It is proper to notice, in connection with this reference to the Act of March, 1682-3, and Mr. Whitehead's Map of the same period, that as one illustrates the other's meaning somewhat to the disadvantage of the claims of modern New Jersey, and carries the Hudson river *between Staten-island and the main, Westward to the Achter Col*, there is a peculiar interest attached to them, for the purposes of this inquiry. Nor is that in-

terest diminished by the fact that Mr. Whitehead seems to have been disposed to conceal that disagreeable Truth, in his exposition of the terms of the Act of March, 1682-3; a disposition which was distinctly displayed in his paraphrase of the Act referred to:—"Bergen included all the settlements between the Hudson and Hackensack rivers, and extended to the northern bounds of the Province," (*East Jersey under the Prop. Governments*, 97.)—omitting all reference whatever, to Constable's Hook, which his map, illustrative of this Chapter, had just shown to have been at the South-western extremity of the Neck, to which point the waters of the Hudson would have been necessarily recognized, on his own authority, had he told "the whole Truth" of the matter.*

VIII. On the thirteenth of September, 1682, the Duke of York commissioned Colonel Thomas Dongan, as Governor of his Colony of New York. In that Commission, the Duke inserted these

* There is a very notable fact, however, which illustrates the entire correctness of Mr. Whitehead's map as well as the impropriety of his omission from the text of his work, of this portion of the earliest description of Bergen county.

Samuel Smith, the learned historian of New Jersey, under the date of 1682, thus alluded to the "Constable's Hook" of the period of the Act referred to: "There was a considerable settlement on *Bergen Point*, THEN CALLED CONSTABLE HOOK, and first improved by Edsall, in 'Nicolls's time;'" (*History of the Colony of Nova-Cæsaria or New Jersey*, Ed. 1765, page 160;) and no better evidence than this, is required to show the exact meaning of the Assembly of East-Jersey, in 1683, when it formally recognized the Hudson's River as far westward as the Achter Col, and the unfairness of Mr. Whitehead in omitting all notice of that recognition, from the text of his narrative.

words: "And whereas I have since for divers
 "good causes and consideracons by severall
 "instrumts undr my hand and seale bargained
 "sold released and confirmed unto Sir George
 "Carterett (late Vice Chamberlaine to His Mats
 "Household) and his heires, and unto Edward
 "Billing and others and their heires, all yt tract of
 "land (prcell of ye prmises) comonly called or
 "knowne by the names of East and West New
 "Jersey, scituate on THE WEST SIDE OF HUDSONS
 "RIVER according to certaine Boundaries more
 "particularly expressed in ye sd sevrall instru-
 "mts and undr certaine rents and covents as
 "therein relacôn being thereunto had may more
 "fully appeare." (*Commission, etc.—Colonial Documents, iii, 329.*)

This description of the bounds of East-Jersey will be more expressive when it shall be read in connection with the Act of the Assembly of East-Jersey, for dividing that Province into Counties, and in comparison with allusions to Staten-island which were made about the same time, by Sir John Werden, the Duke's Secretary, and by Governor Dongan.

On the first of November, 1684, the Secretary remarked, probably in response to something which the Governor had written: "Staten
 "Island wthout doubt belongs to ye Duke for
 "if Sr George Carterett had had right to it,
 "that would have beene long since determined":
 (*Letter, etc., November 1, 1684—Colonial Documents, iii, 352.*)

In a letter to the Earl of Perth, responsive to a very insulting letter which the Earl had written to him, Governor Dongan remarked: "Your agents have dispersed printed papers to ye disturbance of ye inhabitants of Staten Island, *"It hath been in the possion of his Rll Highss above twenty years (except ye little time ye Dutch had it) purchased be Governour Lovelace from ye Indyans in ye time of Sr George Cartaret, WITHOUT ANY PTENCES 'TILL YR AGENTS MADE CLAI ME TO IT,"* (Gov. Dongan to the Earl of Perth, Feb. 13, 1684-5.—*Colonial Documents*, iii, 354.)

IX. Reference has been made to the omission of any notice of Staten-island, as a part of East-Jersey, when, in March, 1683, that Province was divided into Counties; and it has been inferred therefrom, not without reason, that, at that time, Staten-island was not considered a part of that Province, even by its own Assembly; while the waters which flowed between the Island and the main, in that case, were necessarily considered by that body, either as "the main Sea" or "Hudsons river."

It is a very significant fact, in that connection that the Governor of East-Jersey never pretended either to possess or to exercise any authority on Staten-island; while, on the contrary, the Government of New York had never ceased to claim such authority and to exercise it; and in November, 1683, when the latter Province was divided into Counties, "Staten Island, Shutter

“Island, and the Island of Meadow on the west side thereof,” were constituted a County, with the name of “Richmond,” by which it is known to this day.

It is true, as Mr. Whitehead has stated, that Captain Palmer, in May, 1684, asked for a Deed of Confirmation of his property on Staten-island, from the Governor and Council of New Jersey ; but it is obvious that Mr. Palmer’s caution led him to seek a Release from *all possible claimants of the Island*, in order that, in any event, his property might be safe, without improving the pretended title of the Proprietors of East-Jersey or impairing the real one of the Duke of York. This precaution is no evidence that *he* considered the pretended title thereto, of the Proprietors, as worth a straw : it proves only that he desired to be safe, against every contingency. It is evident, however, that the authorities of East-Jersey, had no confidence in their own pretended Rights in the premises ; and that their pretended confirmation of Palmer’s title was considered even by themselves, as little better than a farce. The entry on their *Minutes* is in these words :

“Present, the Deputy Governor,” etc.

“Petition from John Palmer, esq., to have a Patent for the lands he has had and taken up on Staten Island. Upon consideration thereof, *and that it may be of no ill consequence*, BUT RATHER OF SERVICE IN OUR CLAIM TO THAT ISLAND, It is agreed and ordered, that the Governor and Council may make a Patent of the

"same to him." (*MS. Minutes of Proprietors*, Liber A B., folio 13—quoted in *Report of Commissioners*. Edit. Trenton, 1807. p. 62.)

We decline to accept *as true* Mr. Whitehead's statement that "the Duke not only conveyed" [*to the Earl of Perth and others*] "the eastern moiety" "of 'the whole intire premises,' but added "together with all Islands, Bays, &c., words "not in the original Grants;" and our reasons can be ascertained by any one who will read the papers referred to; nor are we prepared to admit, as true, what he insinuates, that, from the day of the date of the Duke's Release to the Earl and his associates, Staten-island and the Bay ceased to be parts of the Duke's Province of New York.

This is evident from the facts, *that the Duke had already granted THE SAME properties, rights, and privileges, such as they were, to the younger Sir George Carteret; (Release to Sir George Carteret, the younger, September 10, 1680;)* that he possessed no portion of what he was asked by the Earl of Perth, to release and convey "to the twenty-four Proprietors;" that he cautiously conveyed, therefore, only "AS FAR "AS IN HIM LYETH," the lands and premises which had been held by Sir George Carteret, the elder, "together with *all Islands, "Bays, Rivers, Waters, Forts, Mines, Minerals, "Quarries, Royalties, Franchises, and Appurtenances whatsoever TO THE SAME BELONGING, OR "IN ANY WISE APPERTAINING; and all the Estate*

“*Right, Title, Interest, Reversion, Remainder, Claim and Demand whatsoever, as well in Law as in Equity, of HIS SAID ROYAL HIGHNESS JAMES, DUKE OF YORK, of, in, unto, or out of the same, or any Part or Parcel of the same ;*” and that the substance of this conveyance to the Earl and his associates, was simply his confirmation, as the Mesne Lord of the Country, of the change of Lessees of East Jersey, and his permission to navigate the waters “leading unto or lying between” the lands thus Leased to the Proprietors, from which the former Lessees had been carefully excluded. That the Duke’s meaning was fully understood by the Grantees is evident from the terms of their Commission to their first Deputy-governor, Gawn Lawrie, which was in these words: * * “constitute and appoint him Deputy Governor of *the said Province, and of all Isles, Rivers, Islands and Seas WITHIN THE SAME, OR BELONGING THERETO.*” (*Commission, etc., July, 1683—Leaming and Spicer, 168-170.*)

If Mr. Whitehead had quoted the Duke’s Release to the Earl of Perth, without mutilation, it would have been apparent to every one, as it must have been to the Duke’s Grantees, that a Release, “as far as in him lyeth,” of what “belonged or in any way appertained” to some thing which he had already Released to the younger Sir George Carteret, did not amount to much, as an absolute conveyance of either what was or what was not mentioned in the Deed ; and

it is not very clear that a grave argument of title, resting entirely on the *mutilated* record of this empty quit-claim, is any better entitled to the respect of the candid, impartial student of the history of our country, than the conveyance or the *mutilated* record on which it depends.

X. On the fourteenth of August, 1687, an order was sent from the Home Government to Governor Dongan, to allow all ships and vessels bound for Perth Amboy to proceed directly to that port, without touching at New York. The order is in these words: "Whereas by former Instructions given unto you His Maty has thought fitt "to Order, *That all Ships & Vessels coming "within THE RIVER AND CHANNEL OF NEW YORK "shall enter at His Maty's Citty and Port of New York*, His Maty is pleased, upon further consideration, to direct us to signify his pleasure "to you That you permit *all Ships & Vessels "bound for New Perth,*" [Perth Amboy] "*in His "Majesty's Colony of East-Jersey to go directly "thither, without touching at New York or being "carried thither, until further order. Provided "always that the Government of East-Jersey do "suffer such person as YOU OR THE RECEIVER "GENERALLOF HIS MATY'S REVENUE AT NEW YORK "for the time being shall appoint, peaceably & "quietly to receive & collect for His Maty's "use the same Customs & Imposts as are usually "paid at New York for such shippes and their "lading as are entred there."* (Order, etc., August 14, 1687—*Colonial Documents*, iii, 428.)

On the thirteenth of December, of the same year, the King issued *Instructions for our Trusty @ Webelov'd Matthew Ploverman, Esqre Our Collectr and Receiver of our Revenue on our Province of N York and the Territories depending thereon in America*, in the third clause of which the Hudson's river is styled "the River or Channell of "New York or Hudsons River"—which explains the meaning of the term which was applied to Godyns Bay, in the Order to Governor Dongan, last referred to, and establishes the fact that His Majesty and his Council considered, as late as 1687, that Hudson's river extended, seaward, as far as Sandy Hook.

In the eighth clause of these *Instructions* is an Order of similar purport to that which had been issued to Governor Dongan, four months before; and in that, also, the waters leading to Perth Amboy are styled "the River or Channell of "N York or Hudson's River." (*Instructions*, etc., Dec. 13, 1687—*Colonial Documents*, iii, 501, 502.)

It will be seen from these orders, that the waters leading from the ocean to Perth Amboy, [*Godyn's Bay*] were considered in 1687, as "the "river and channel of New York or Hudson's "River ;" that the jurisdiction over those waters belonged to the Governor of New York, notwithstanding the Release to the Earl of Perth ; and that, even when a special favor was granted in order to facilitate Trade, the Governor of New York did not cease to exercise legal and recog-

nized authority over those waters and that Trade, even at the piers in the port of Perth Amboy.

What better evidence is needed to prove that, in 1687, at least, the waters which are the subject of this enquiry, as well as those which lead to them, were considered by the common Sovereign of both New Jersey and New York, as belonging to the latter?

XI. In the year 1689, "several Merchants and adventures tradeing to and interested in the province of New York and the adjacent Colonys and Islands in America," petitioned the King that the inroads of the French had jeopardized the Colonies; and they prayed that measures might be adopted to protect them. (*Petition, etc.—Colonial Documents*, iii, 651)

Accompanying this Petition were sundry *Reasons* to "inforce" it on His Majesty's attention; as well as sundry "Proposals," of which the following is the first: "That a platform be built at Sandy Hooke or sandy Bay in East Jersey AT THE ENTRANCE INTO HUDSON'S RIVER FROM THE SEA which lyēs so conveniently scituated by reason of the great settled sandbanks there that no ship can pass up into Hudson's river but within muskett shott, as will appear by the mapp." (*Reasons, etc.—Colonial Documents*, iii. 352, 353.)

XII. It is very well known to all who are acquainted with the early history of New Jersey and New York, that the Proprietors of East

Jersey insisted on their right to establish a Port at Perth-Amboy, at which goods might be laden and discharged without accountability to the Colonial authorities of New York ; while the latter steadily resisted the claim and denied its legality.

At length, the subject was brought before the King and his Council ; and the result of that application was communicated by the Lords of Trade to the Earl of Bellomont, in these words :
 “ Since your Lordsp’s departure from hence, *the proprietors of East and West New Jersey having been very pressing for the privilege of Ports in those Countries.* we have been obliged to enquire carefully into their *pretended* right thereunto, and to lay our opinion before His Majty, *that they have no such rights. and that it is not convenient it should be granted to them ; upon which His Majty having been pleased to* GIVE DIRECTIONS ACCORDINGLY, and a copy of our representation being inserted in the order of Council made thereupon, we send you herewithall a copy of the said order, *that you may understand the reasons of that determination, and* TAKE CARE THAT THE RIGHTS AND PRIVILEGES OF THE PROVINCE OF NEW YORK BE NOT INFRINGED.” (*Lords of Trade to Earl Bellomont, Feb. 23, 1697-8.—Colonial Documents, iv, 298.*)

A careful perusal of the “opinion” of the Board of Trade, on the subject referred to, and of His Majesty’s Order in Council, which was based on that “opinion,” would

throw some light on the ridiculous pretences of some who have assumed to speak in behalf of the "*pretended rights*" of East-Jersey, on other subjects as well as on this. For the purposes of this enquiry, however, only a small portion of that "*opinion*," which His Majesty adopted and embodied in his "*Order*" on the subject, need be quoted; but that portion is a fair specimen of the character of the entire paper.

In reference to the Proprietors' petition for an "*Order*" to establish a Port at Perth-Amboy, the Board of Trade expressed this "*opinion* :

"That it is, in no place that we know of, "either in England or elsewhere, usuall to *have* "*two Ports, independent on each other, IN ONE AND* "THE SAME RIVER, OR WITHIN THE SAME CAPES OR "OUTLET INTO THE SEA; such a practice being "manifestly liable to great Inconveniencies.

"*That Perth-Amboy LIES ON ONE SIDE OF THE* "MOUTH OF THE SAME RIVER WHICH RUNS BY THE "CITTIE OF NEW YORK (THAT RIVER BEING DIVIDED "IN THE MOUTH OF IT BY AN ISLD CALLED STATEN "ISLAND) and is within the same capes." (*Report of Board of Trade, 25th Nov., 1697—MS. Documents, Secretary of State's office, iv, 298.*)

This "*opinion*," as has been stated, was adopted by His Majesty and the Council, and embodied in their "*Order*" denying the "*pretended right*" and coveted privilege; and a copy of it was transmitted, officially, to the Governor of New York, that he might "*understand the reasons of*

“the determination;” with an order to “take care that THE RIGHTS AND PRIVILEGES OF THE PROVINCE OF NEW YORK be not infringed.”

The consequence of this *Order in Council* was very soon apparent. The Proprietors, whose principal purpose in purchasing the lands and settling them was to make themselves independent, on matters of Government, of all other persons, (*Memorial of the Proprietors to the Lords of Trade*, July 5, 1699,) abandoned the project and surrendered their “pretended right” to the Queen; (*Articles of Surrender*, April 15, 1702;) while Perth-Amboy was “overshadowed by New York;” (*Gordon’s Gazetteer of New Jersey*, 214,) and New Jersey, on all matters of commerce, thenceforth became in fact, as well as in law, entirely subordinate to New York.

XIII. On the seventh of December, 1700, the Earl of Bellomont ordered Colonel Romer, a well-known engineer, to sound the waters between the city and the ocean; to ascertain whether any ships could approach by way of Amboy; and to select sites for defensive works, for the protection of the city from an assault on its water-front.

On the thirteenth of the succeeding January, [1700-1] the Colonel made an elaborate report, in every part of which the waters which separated Staten-island from the main, were considered as, and called, “a second arm of Hudson river called the Coll, between Staten-island and East-Jersey.” (*Report of Colonel Romer*,

January 13, 1700-1—*Colonial Documents*. iv. 836, 837.)

It will be seen that Colonel Romer, after whom the celebrated "Romer Shoal" was named, followed the theory of the Board of Trade and the King and Council; and considered "The Kill van Col," "The Sound," "Raritan Bay," and "The Lower Bay," only as "a second arm of Hudson's River." The value of his opinion on this subject, may be readily ascertained from what has been written.

From the evidence which has been adduced, it will be seen that, from an early day—as early as 1643—the waters of what we call "The Bay," as well as those of what we call "The Kills" and "the Lower Bay," were considered and disposed of as waters of Hudson's River, (*Patent to Anthony Jansen, at Gravesend*, May 27, 1643;) and that, without a single adverse witness, the same opinion prevailed and the same action was continued, both in Europe and America, among the Dutch as well as the English, until the surrender of the Colony to the King of Great Britain, and its transfer to the Duke of York, in July 1674. (*Original Deed for Gravesend*. L. I., Sept 10, 1645; *Remonstrance of Adriaen van der Donck and others*, July 28, 1649; Cornelis van Tienhoven's *Information*, etc., March 4, 1650; Director Stuyvesant's *Description of the boundaries of New Netherland*, February, 1651; N. N.'s *America*, Edit. 1655, page 269; Adriaen van der Donck's *Map of New Netherland*, Edit.

1656 ; Nicholas J. Visscher's *Map of New Belgium*. etc.. Edit. 1656 ; Jacques Corteljou's *Petition*, January 23, 1657 ; Director Stuyvesant's *Letter to the States-General*. "last of "February, 1664;" The same to *Messrs. La Montagne and van Rensselaer*, Aug. 29, 1664 ; *The Register of the Attack and Reduction of New Netherland*; Governor Nicolls's *Patent for lands at Neversink*, April 8, 1665 ; *Certificate of Director Stuyvesant's farmers*, August 14, 1666 ; Director Stuyvesant's *Observations*, 1666 ; Governor Nicolls's *Patent for the town of Gravesend*, August 15, 1668 ; Heylin's *Cosmographie*. Edit. 1669, Liber IV, page 96 ; *Indian Deed of Staten-island*, April 13, 1670 ; Mountanus's *De Nieuwe en Onbekende Weereld*, Edit. 1670, page 123 ; Ogilby's *America*. Edit. 1671, page 170 ; *Minutes of the Council*, April 23, 1674 ; etc.)

At that time, after the opinion above referred to had become well-grounded throughout the entire civilized world and while it was yet entirely uncontradicted by either the avaricious or the envious in any part of the globe, the Duke of York, as the Mesne Lord of the Country, Leased and Released to Sir George Carteret, "all that "Tract of land and Premises" which was known, subsequently, as East-Jersey and bounded on its Eastern front by "the main Sea" and "Hudson's "River;" (*Release*, etc., July 29, 1674 ; Sir George Carteret's *Directions, Instructions, and Orders*. July 31, 1674 ; *Quintipartite Deed*, July 1, 1676 ; *Release to Sir George Carteret, the younger*,

September 10, 1680; *Dame Elizabeth Carteret and others' Deed to William Penn and others*, March 14, 1682; *Articles of Surrender of the Proprietors' pretended right of Government*, April 15, 1702; etc.)

It is a reasonable conclusion, therefore, that in accordance with the general use of the term at that period, the Lease and Release in question, were intended to convey only the lands which were bounded, on the East, by *low water mark* on "the main Seas," or Atlantic Ocean, and on "Hudson's River," or, as it is now called, in different localities, on "The Lower Bay," "Raritan Bay," "The Sound," "The Kill van Col," "The Bay of New York," and "The North River;" and that the latter, and the islands which are in them, are not, historically considered, nor have they ever been, waters or islands of either East Jersey or New Jersey.

This conclusion is sustained, FIRSTLY: By the terms of the original Deeds of *Lease and Release*; (*Release*, July 29, 1674). SECONDLY: By the subsequent action of both the original parties thereto; (Sir George Carteret's *Directions*, etc., July 31, 1674; *Quintipartite Deed*, July 1, 1676; Gov. Andross's *Warrant for taking up Gov. Carteret's pigs*, Sept. 23, 1675; *Patent*, by Gov. Andross, to Capt. Billop, Mch 25, 1676; *Act to levy £150, in East-Jersey*, Apl. 3, 1679; *Omission of grant of land on Staten-island, to Joseph Hunt*, Feb. 14, 1678; *Sale, by the Duke, of a right to navigate the waters referred to,*

Sept. 10, 1680 ; *The similar sale to the Earl of Perth and others*, March 14, 1682 ; *Order from the Lords of Trade to Governor Dongan*, Aug. 14, 1687 ; *Instructions to Collector Plowman*, Dec. 13, 1687 ; etc.) THIRDLY : By the action or direct acknowledgment of those into whose hands Sir George's estate in East-Jersey fell. after his death, in 1679 ; (*Purchase, by Sir George Carteret, the younger, of a right to navigate*, Sept. 10, 1680 ; *Act for dividing East-Jersey into Counties*, March 1, 1683 ; *Deed of surrender to the Queen, of "the pretended right of Government," by the Proprietors*, April 15, 1702 ; etc,) and FOURTHLY : By the action or direct acknowledgment of King William and his servants, into whose hands the Duke's property passed, after the abdication of the latter. (*The King's Orders in Council*, Nov. 25, 1697.)

Although it is confidently believed that the position of the learned Attorney-General has been clearly sustained by the train of authorities, extending from 1644 until 1702, which have been adduced ; and by the application of their testimony to the several branches of the subject ; there is another stand-point from which the question which was proposed by General Cochrane may be examined, it is believed, with precisely the same result.

Thus, it may be said, for that purpose only, that the waters which separate Staten-island from the main are not, nor were they ever, properly considered waters of the Hudson's river ; that

the Narrows were, and are, the only channel of that river ; or, if that shall be more acceptable, that the river does not flow, nor has it ever flowed, *as such*, further to the Southward than the southernmost point of Manhattan-island.

It is unquestionably true, that, by the terms of the Treaty of Westminster, the title to New Netherland, for the first time, was legally vested in the King of Great Britain ; and that, on the twenty-ninth of June, 1674, Letters Patents were issued to James, Duke of York, in which were included Grants, among other properties, of “all
“ that Island or Islands, commonly called by
“ the several Name or Names of *Matowacks* or
“ *Long-Island*, scituate, and being towards the
“ West of *Cape Codd* and *Narrow-Higansetts*.
“ abutting on the main Land between the two
“ Rivers there, called or known by the several
“ Names of *Conecticut* and *Hudsons-River* ; to-
“ gether also with the said River called *Hudsons-*
“ *River*, and all the land from the West side of
“ *Connecticut-River*, to the East side of *Delaware*
“ Bay. And also all those several Islands called
“ or known by the Names of *Martin Vinyards*
“ and *Nantukes* otherwise *Nantuckett* ; together
“ with all the Lands, Islands, Soils, Rivers,
“ Harbours, Mines, Minerals, Quarries, Woods
“ Marshes, Waters, Lakes, Fishings, Hawking,
“ Hunting and Fowling ; and all other Royalty’s
“ Profits, Commodities and Hereditaments to the
“ said several Islands, Lands and Premises be-
“ longing and appertaining, with their and every

“ of their Appurtenances ; and all our ” [*the King's*] “ Estate, Right, Title, Interest, Benefit
 “ and Advantage, Claim and Demand of, in or
 “ to the said Lands or Premises, or any Part or
 “ Parcel thereof, and the Reversion or Rever-
 “ sions, Remainder or Remainders ; together
 “ with the yearly and other Rents, Revenues and
 “ Profits of the Premises, and of every Part and
 “ Parcel thereof ; TO HAVE AND TO HOLD all and
 “ singular the said Lands and Premises, with
 “ their and every of their Appurtenances, hereby
 “ given and granted, or herein before mentioned
 “ to be given and granted unto our said dearest
 “ Brother JAMES Duke of *York*, his Heirs and
 “ Assigns forever ;”—not absolutely, in fee simple,
 as Mr. Whitehead seems to suppose, but—“ to be
 “ holden of us, our Heirs and Successors. as of
 “ our Mannor of *East Greenwich* in our County of
 “ *Kent*, in free and common Soccage, and not in
 “ Capite, or by Knight Service yielding and rend-
 “ ering. And the said JAMES Duke of *York*, for
 “ himself, his Heirs and Assigns, doth Covenant
 “ and Promise to yield and render unto us our
 “ Heirs and Successors, of and for the same yearly
 “ and every Year, Forty Beaver Skins when they
 “ shall be demanded, or within Ninety Days after
 “ such demand made.” (*Letters Patents to the*
Duke of York, June 29, 1674.)

It is not necessary, for the purpose of this dis-
 cussion, to notice other portions of the Grant to
 the Duke of York ; nor is it any more necessary
 to describe, in all its details, the nature of the

tenure by which the Duke held the immense tracts of land and water to which reference has been made.

It is enough to say that the Duke was merely *the King's tenant*, holding the country as a *tenement*, agreeably to the well-established and well-known law of the land, as it was at the period of the Grant; and Mr. Whitehead and those with him who measure by the standard of modern conveyancing in America, the Grant of what was subsequently known as East-Jersey, either by the King, or the Duke of York, have either failed to discover a very important element in this subject, or neglected to bring it before their readers and the world.

But, as has been said, this branch of the main subject need not be discussed in this place, as it has little connection with the question which is immediately under examination.

It is equally true, however, that on the twenty-ninth of July, 1674, the Duke of York, *as the Mesne Lord of the Country*, "for and in consideration of a competent Sum of good and lawful Money of *England* to his Royal Highness in Hand paid by Sir George Carteret," *re-leased to the latter*, as a *sub-Tenant*, after the feudal custom of those times, "all that Tract of Land adjacent to *New-England*. and lying and being to the Westward of *Long-Island* and *Mankitas Island*, and bounded on the East part by the main Sea, and Part by *Hudson's River*. and extends Southward * * * which said Tract of Land is

“hereafter to be called by the Name or Names of
 “*New-Cæsarea* or *New-Jersey*: And also all
 “Rivers, Mines, Mineralls, Woods, Fishings,
 “Hawking, Hunting, and Fowling, and all Roy-
 “alties, Profits, Commodities, and Heredita-
 “ments whatsoever, to the said Lands, and Pre-
 “mises belonging or appertaining; with their and
 “every of their Appurtenances, in as full and
 “ample manner as the same is granted unto the
 “said JAMES Duke of *York* by the before recited
 “Letters Patents; and all the Estate, Right, Ti-
 “tle, Interest, Benefit, Advantage, Claim and De-
 “mand of the said JAMES Duke of *York*, of in and
 “to the said Lands and Premises, or any Part or
 “Parcel thereof, and the Reversion and Rever-
 “sions, Remainder and Remainders thereof:”

* * * “TO HAVE AND TO HOLD all and singular
 “the said Tract of Land and Premises: with
 “their, and every of their Appurtenances, and
 “every Part and Parcel thereof, unto the said
 “SIR GEORGE CARTERET, his Heirs and Assigns
 “for ever; yielding and paying therefore
 “unto the said JAMES Duke of *York*, his Heirs
 “and Assigns, for the Tract of Land and Pre-
 “mises, Yearly the sum of *Twenty Nobles* of
 “lawful Money of *England*, if the same shall be
 “lawfully demanded at or in the Inner Temple
 “Hall *London*, at the Feast of *St. Michael* the
 “Arch Angel yearly.” (*Release to Sir George*
Carteret, July 29, 1674.—*Leaming and Spicer*,
 46-48.)

It will not be necessary to encumber these

pages with a detailed description of the tenure by which, *as the Duke's tenant*, Sir George held the "Tract of Land" or *tenement* which has been described ; nor will it be necessary to inform the reader why, *as such Tenant*, a yearly rental therefor was agreed upon. in addition to the "fine," or "competent Sum of good and lawful Money of *England* to his Royal Highness in Hand paid by the said Sir GEORGE CARTERET, before the Ensealing and Delivery of" the Duke's Release, by which the Grantee was settled in his possession, after the restoration of the country to the King of Great Britain.

It will be useful, however, to remind Mr. Whitehead, that Sir George *bought nothing but the possession*, as a sub-tenant, of the "Tract of Land" and its appurtenances, which have been described, for which he agreed to pay to his Lord, the Duke, a yearly rental of Twenty Nobles ; and that, as no other reservation, by way of rental or otherwise, was made by the Duke, as the Mesne Lord, Sir William Jones subsequently decided with great propriety, that no other consideration or rental than the Twenty Nobles per annum, which had been reserved in the Release to Sir George, could be legally imposed upon the sub-tenant or his Assigns, by the Duke or his servants. (*Sir Wm. Jones's Opinion*, 28 July, 1680—*Colonial Documents*, iii, 285.)

It is equally clear, however--and Mr. Whitehead and those who concur with him appear to have overlooked that fact--that *the terms of the*

same Release which protected Sir George and his Assigns from the Duke's tax-gatherers, also protected the Duke from Sir George Carteret and his Assigns, in the legal occupation and control of all the LANDS of his Dominion, (except the "Tract of Land adjacent to New England," which was described in the Duke's Release to Sir George,) and of EVERY "Island" (INCLUDING STATEN, and Shutters, and Hobock) and EVERY "Soil and Harbour" (including The Bay of the North River or Godyns Bay) and ALL the "Quarries" and "Marshes" (including those which were made parts of Richmond County, in the Act of November 1, 1683) and ALL the "Waters" (including the Sound and the Kill van Col—the Achter Col—"belonging or appertaining" to East Jersey,—) and ALL the Lakes, which were within the entire country, together with all the Rivers, Mines, Minerals, Woods, Fishings, Hawking, Hunting, and Fowling therein, WHICH DID NOT NECESSARILY BELONG OR "APPURTAIN TO THE SAID LANDS AND PREMISES," inasmuch as no portion whatever of all these had been conveyed by him to Sir George or to any other person.

If this view is correct—and it may be settled for himself by any one who will take the trouble to compare the character and extent of the Duke's estate in America, as described in the *King's Letters Patents* of the twenty-ninth of June, 1674, with what he Re-leased to Sir George Carteret, as described in his *Release* of the twenty-ninth of July, 1674, both of which have been copied into

this *Review*—Sir George had acquired no more title to the waters in question, although they were neither waters of “the main Sea,” nor of “Hudson’s River,” nor to Staten Island, than the Duke had reserved in the profits of Sir George’s tenement, the *Release* being equally silent on both subjects.

Nor was the omission of these premises from the terms of the Duke’s *Release* to Sir George Carteret, ever remedied.

When the latter died, in 1679–80, his property descended to his grandson, unto whom, as the sub-tenant, subject, of course, to the terms of his Grandfather’s will, the usual *Release* was made by the Duke, as the Mesne Lord of the country. (*Blackstone’s Commentaries*, Book II, Chap. V.—Edit. Oxford, 1766, ii, 66, 67; *The Duke’s Warrant to Sir John Churchill to prepare the Release*, Sept. 6, 1680; *Recital to the Duke’s Release to the Earl of Perth*, March 14, 1682–3; etc.) On the sixth of March, 1679–80, the Trustees of Sir George’s estate conveyed it to Thomas Cremer and Thomas Pocock; on the second of February, 1692–3, these gentlemen, in connection with the Trustees and Executrix of Sir George Carteret, re-sold that portion of the estate of the latter, which was in East-Jersey, to William Penn and others; by whom one moiety of the same was subsequently re-sold to the Earl of Perth and others—the aggregate numbering twenty-four persons.

Unto these, as sub-tenants, after the payment of the usual “fine,” agreeably to the feudal law

of that day, the Duke of York, as the Mesne Lord, re-leased the premises which had been conveyed to Sir George Carteret, together with "all Isles and Islands,*" * * "THEREUNTO BELONGING," certain specified rights of Government which "were necessary," etc., and "the free Use of all Bays, Rivers and Waters, leading unto or lying between the said Premises, or any of them, in the said Parts of *East New-Jersey*, for Navigation, free Trade, Fishings, or otherwise;" reserving, of course, —because they are not included —all his property in the Islands which did *not* "belong to" East Jersey, and all his rights in every other part of the domain, subject only to the easement, "for Navigation," etc., on the waters "leading unto or lying between the said Premises" [*East New-Jersey*] "or any of them."

For the reason, therefore, that Staten-island and the "waters" in question, were reserved, when the Duke conveyed East-Jersey to Sir George Carteret; and for the additional reason, that they were never subsequently conveyed, either to Sir George or to his Heirs or Assigns, they may be properly claimed, as they have been and are now, claimed, historically, as a portion of the ancient territory of New York, subject only to the easement referred to and to the provisions of the inter-State Treaty of 1834.

H. B. D.

*Nothing was said in this Deed, of any "Bays," among the Premises re-leased by the Duke, on that occasion, as some persons have gravely asserted was the case.

VI.

A REJOINDER

TO

“A MEMBER OF THE NEW YORK HIS-
TORICAL SOCIETY,”

BY

MR. WILLIAM A. WHITEHEAD.

MR. WHITEHEAD'S REJOINDER.

A correspondent of *THE GAZETTE*, introduced to its readers as "A Member of the New York "Historical Society," in attempting to elucidate the vexed questions which have been discussed under the above heading, has signally succeeded in surrounding them all with a mystifying halo, well calculated to mislead the unwary, and confuse those unaccustomed to the effect of the cross lights which historical research is apt to throw upon controverted subjects. In view, therefore, of the position the writer has felt called upon to assume, he deems it justly due to himself and historic truth, to endeavor to relieve whoever may be interested in the controversy, from the maze of error into which they are liable to be led by the gentleman's long and labored article, although, from its tone and temper, its personalities and most unwarrantable aspersions of motives, it might very properly be left unnoticed.

It is well, perhaps, to draw attention to the fact that this discussion originated in a positive announcement by Attorney General COCHRANE that "the waters of the Hudson in their seaward current debouch through both the narrows and the Kills": that "the Hudson River

"empties itself through its two mouths, the Narrows and the Kills, into the Bay of New York"; and that "all the waters which lave Staten Island shores were, from the period of their discovery, known and accepted, and should properly now be considered, the waters of Hudson River."

These assertions were presented and urged in a manner and form exceedingly objectionable to Jerseymen ; and the writer, in reviewing the paper through which they were given to the public, exhonerated his native State from the approbrium sought to be cast upon her, and, at the same time, showed conclusively that the waters referred to, west of Staten Island, could never have been recognized, and could not now be recognized, as part of the Hudson, inasmuch *as not a drop of the waters of that river passes through that channel*. The "Member of the New York "Historical Society," who has come to the support of Mr. COCHRANE, does not pretend to controvert this truth ; "but," he says, "the question is not as to the *physical facts* concerning those "waters," but solely, the *historical character* which "belongs to them." Indeed ! Is it not the province of history to elicit and treat of *facts* ? Is any one class of facts less deserving of consideration than another ? Can any amount of evidence, historical or otherwise, establish that which never did and never can exist ? It was a "physical fact," in the days of Galileo, that the earth moved. Would the gentleman have us ignore that fact and believe it to have been a fixture in the universe

then, and to be so now, because such was its "historical character" among the Inquisitors of 1633? If facts are to be set aside as intrusive in a historical discussion, then indeed, was he, of old, right, when he said "Read me not history for that I know is false." But as the gentleman concedes the fact that the waters of the Hudson do not flow between Staten Island and the main land, that point, *the only one really at issue*, may be considered satisfactorily settled; and attention may be directed to the theories upon which he bases his historical disquisition.

It is unnecessary to recapitulate the grounds upon which it is attempted to ignore, as of no legal force, the Royal grant of Charles and the transfer by the Duke of York to Berkley and Carteret, in 1664, for, in reality, their existence, or non-existence, has little to do with the true merits of the case; but, it may be asked, if "physical facts" are expected to give way to the "historical character" of the discussion, why should not *legal doubts* be set aside for the same reason?—particularly, as we are told subsequently, (the Commissioners of New Jersey, in 1769, having the credit for originating the idea) that, in construing deeds and grants, "the principles of justice require that the intent and meaning of the parties should be the governing rule of construction," for the "intent and meaning" of the grants referred to are not questioned, even by THE GAZETTE's correspondent. But the first point he makes, after ignoring these grants, is, that the

rights of John Lord Berkley and Sir George Carteret—and, of course, those claiming through one or both of them—“ were derived SOLELY, “ from the Royal Charter to the Duke dated “ June 29th 1674, and from the Duke’s Lease “ and Release to Sir George Carteret in sever- “ alty dated July 28th and 29th 1674, AND FROM NO “ OTHER SOURCE WHATEVER.”

On this the writer joins issue with him, not only as to the fact itself, but also, as to the conclusions based upon it, if it were a fact.

This restriction of the rights of the Proprietors of New Jersey and their assigns, is made to bear, first, upon their authority *to govern* the country which had been conveyed to them. It is said, “ no portion of which prerogatives ” [*those de- rived from the King*] “ affecting the Realities of “ the territory, was conveyed, or delegated by “ him to Sir George Carteret, in the Lease and “ Release of ‘ the said Tract of Land and Premi- “ ses ’ to which reference has been made, *nor* in “ any other Instrument of Conveyance or Dele- “ gation, either at that time, or at any subsequent “ period.” Now the very documents the gentle- man refers to, the *Lease* and *Release* of the Duke, transfer New Jersey to Sir George Carteret, “ IN AS FULL AND AMPLE MANNER AS THE SAME IS “ GRANTED UNTO THE SAID JAMES DUKE OF YORK “ BY THE BEFORE RECITED LETTERS PATENTS, and “ all the Estate, Right, Title, Interest, Benefit, “ Advantage, Claim, and Demand, of the said “ James Duke of York,” &c. *That* is certainly

emphatic language, and as, according to the dogma endorsed by the gentleman, "the intent and meaning" of parties must be considered, irrespective of facts, when both the facts and the meaning of the parties coincide. there should be acceptance, one would think, of the results thus confirmed: and it is rather significant of what he meant, that James should never have attempted himself, whatever his governors of New York may have done, to exercise, or even to claim, the government of the tract he thus conveyed. Even the acts of Andros, for which he had, apparently authority in the *letter* of his commission, were repudiated by the Duke, as the "Member of the New York Historical Society" must know, if he is as familiar with the authorities as he professes to be. But if any thing more is wanted to confirm this view of what were his "intent and meaning" let the following extract from a document headed "CHARLES R" be read:

" * * * We being willing and desirous to encourage the Inhabitting and Planting of the said Province, and to preserve the Peace and Welfare of all our loving subjects residing there, we do therefore hereby require you in our Name to use your utmost endeavours to prevent all Troubles and Disorders there for the future: and strictly to charge and command all Persons whatsoever inhabiting within the said Province, forthwith to yield obedience to ~~the~~ the Laws and Government, which are or shall be there established by the said Sir GEORGE CARTERET, who hath the sole Power under us, to settle and dispose of the said

“Country upon such Terms and Conditions as we shall think fit ~~and~~ and we shall expect a ready compliance with this our Will and Pleasure from all persons, &c., &c.”

This letter, which was addressed to John Berry, Deputy-Governor under Carteret, may be one of those facts that are to be treated “historically,” and robbed of its force, because it bears the date of 13th June, 1674, a few days prior to the renewed Letters Patent to the Duke of York; but it is conclusive as to what were the “intent and meaning” of the first conveyances, whose existing vitality it confirms; and also, as to the sentiments of all parties concerned about the time the second grants were perfected. But if doubts should be entertained in regard to this they will be expelled presently, and in the meanwhile attention is asked to one document which it is rather remarkable should have been overlooked by the gentleman. Every true historical enquirer should hesitate to attribute to an opponent *an intention* to suppress any fact or document essential to the full consideration of any subject, and the course of THE GAZETTE’S correspondent in that respect will not, therefore, be followed; but in *New York Colonial Documents*, Vol. III.—a volume from which he quotes—on page 285, will be found this letter from the “honest and wise” Sir William Jones, “the greatest man of the law” in his day, as Burnet called him:

"28 July, 1680.

"I doe hereby humbly certify that having
 "heard wt hath beene insisted upon for his Royll
 "Highnesse to make good ye legallity of ye de-
 "mand of Five pr cent from ye inhabitants of
 "New Jersey ; *I am not satisfied* (by any thing
 "that I have yet heard) *that ye Duke can legally*
 "*demand that or any other duty from ye inhabi-*
 "*tants of those lands.* And yt wch makes ye
 "case the stronger *against his Rll Hss* is, that
 "these inhabitants clayme undr a graunt from
 "his Royll Highnesse to ye Lord Berkeley and
 "Sir George Carteret in wch graunt *there is noe*
 "*reservacon of any proffitt* OR SOE MUCH AS OF
 "JURISDICCON. W. JONES."

It is evident that there was no "Member of
 "the New York Historical Society" in those
 days to enlighten Sir William. A reference to
 the volume from which the letter is quoted
 will show the willingness of the Duke of York
 to comply with the "intent" of his grants as in-
 terpreted by this legal giant.

The second point made by the "Member of
 "the New York Historical Society" is that,
 although James conveys "all Rivers, Mines,
 "Minerals, Woods, Fishing, Hawking, Hunting
 "and Fowling, and *all* Royalties, Profits, Com-
 "modities and Hereditaments *whatsoever*, to the
 "said Lands and Premises belonging or apper-
 "taining : with their and every of their apper-
 "tainances, &c.," yet "Islands," "Soils," "Har-
 "bors" and "Marshes" which were also spe-
 cifically named in the Letters Patent from the
 King to the Duke, *are not mentioned* and there-

fore—THEREFORE—the “historical character” of the missing items requires it to be said—“The “Tract of Land and Premises which were thus “conveyed to Sir George Carteret and the “Rivers belonging or appertaining thereto, “were and are, historically, all that then formed, “or now form, the Province or State of East “Jersey; and whatever tracts of land and ‘what- “ever rivers [*not ?*] belonging or appertaining “‘thereto,’ which were not thus Released, and “all the Islands, Soils, Harbours, Waters and “Marshes which were between Connecticut “River on the East and Delaware River on the “West, *whether within or without the limits of “East Jersey* together with the River called “‘Hudson’s River’ and the several prerogatives “of Sovereignty which had been separately and “specifically conveyed to the Duke by the King, “REMAINED WITH THE DUKE ENTIRELY UNIMPAIR- “ED.”






Poor East Jersey! How desolate! No islands, no soils, no harbors, no waters, no marshes, no quarries, (for “quarries” too were omitted.) ALL “retained by the Duke of York as part of his “Colonial possessions, and are still to be con- “sidered *historically* [*! !*] waters and lands of “the State of New York.” Mr. Cochrane concluded his paper by proposing merely to have Raritan Bay “expunged from the Map, and “expelled from our physical geography as a “New Jersey heresy,” but his coadjutor seems to consider it an easy matter to absorb the whole

State. Such statements do not call for refutation. They are simply and preposterously absurd, having neither facts nor "intents" to sustain them, as JAMES HIMSELF, as we shall see, TESTIFIES UNDER HIS OWN HAND AND SEAL.

It will have been observed the assertion is broadly made that no portion of the prerogatives granted to the Duke by the Letters Patent of June, 1674, were transferred to the Proprietors of New Jersey in the subsequent *Lease and Release*, "*nor in any other Instrument or Conveyance or Delegation, either at that time, or at any subsequent period:*" and that the right of the Proprietors were "derived SOLELY from the Royal Charter and the Duke's *Lease and Release* of 1674 and *from no other source*," and whatever was not by them, in expressed terms conveyed, "remained with the Duke, entirely unimpaired." If all this were so, which the writer does not admit, and Sir William Jones denies, the Duke's right to dispose of those "prerogatives," and those "islands," "waters," "quarries," &c., as he might think proper was certainly unquestionable. NOW THAT VERY THING HE DID by his conveyance to the twenty-four Proprietors of East Jersey on the 14th of March, 1682-3. With his usual courtesy, the "Member of the New York Historical Society" accuses the writer of giving a "mutilated" extract from this deed when referring to it on a previous occasion, although the words he particularly dwells upon, as left out—"so far as in

"him lieth"—were actually made the subject of comment. It is not usual to quote the whole of a document every time a portion of it may be pertinent to the subject under review, but the gentleman shall be favored in due time with an explanation of the phrase he refers to, as well as with further extracts from the grant itself.

In that document the Duke sets forth, not only that he *had* on the 23d and 24th June, 1664, conveyed New Jersey to Berkley and Carteret, (*the legal force and validity of which conveyance he affirms*) and subsequently executed the other grants which have been referred to, *expressly*, so he says, *as he had received it from the King*, with its "islands," "soils," "marshes," &c.; but, also, that, in consequence of the partition made by the grantees of the said tract, and subsequent sale by Sir George Carteret of the eastern moiety, he grants and conveys anew to the twenty-four Proprietors, in whom the title then rested, "their Heirs and Assigns all that Tract "Share and Portion and all those Parts Shares "and Portions of all that entire Tract of Land, "and all those entire Premises so granted to his "said Royal Highness, * * * called by the "Name of East New Jersey together with "~~the~~ all ISLANDS BAYS Rivers WATERS Forts "Mines Minerals QUARRIES Royalties Franchises "and appertainances whatsoever to the same belonging, or in any wise appertaining, &c., "~~the~~ free use of all Bays Rivers and "Waters leading unto or lying between the said

“ Premises, or any of them, in the said Parts of
 “ East New Jersey, for Navigation, free Trade,
 “ Fishing or otherwise  To HAVE AND TO
 “ HOLD &c to improve and plant the said Pre-
 “ misses with People and to exercise  all
 “ necessary Government  therein, whereby
 “ the Premises may be the better improved does
 “ and doth by these Presents give grant assign
 “ and transfer unto the said ” [naming the
 Twenty-four] “ their Heirs and Assigns, Proprie-
 “ tors of the said Province of East New Jersey
 “ aforesaid, for the Time being  all and every
 “ such AND THE SAME Powers, Authorities, Juris-
 “ dictions, Governments, and other Matters and
 “ Things whatsoever which by the said respective
 “ recited Letters Patents, or either of them are or
 “ were granted, or intended to be granted to be
 “ exercised by his said Royal Highness his Heirs
 “ Assigns Deputies Officers or Agents in or upon,
 “ or in Relation unto the said Premises &c.” 

What rights of property, what prerogatives,
 pray, are retained here by the Duke, to become
 “historically” or in any other *Pickwickian*
 sense, united to New York? And see, too, what
 Charles himself said in confirmation of this last
 mentioned conveyance “ His Majesty doth here-
 “ by declare his Royal Will and Pleasure, and
 “ doth strictly charge and command the Planters
 “ and Inhabitants, and all other Persons con-
 “ cerned in the said Province of East New
 “ Jersey, that they do submit and give all due
 “ obedience to the Laws and Government of the

"said Grantees their Heirs and Assigns, *as absolute Proprietors and Governors thereof, &c.*" This was under date of November, 1683. Need anything more be said to show how entirely at variance with the facts is this "historical" theory?

The writer's mode of disposing of Mr. COCHRANE'S arguments, based upon a passage in Ogilby's *History of America*, does not meet the approval of the "Member of the New York Historical Society;" and it is probable no greater satisfaction will be felt with the opinions he may express respecting the use made of that work by the gentleman himself.

It is somewhat remarkable that such peculiar stress should be laid upon a single paragraph written by one who was never on this side of the Atlantic, whose ears were open to any "old wives fables," and his pen as ready to record them, and whose sole authority for the details of his map was the imperfect ones of Vischer and Vander Donck; but, in a theory which discards "physical facts" it may be consistent to accept, as all sufficient authority, one whose knowledge of the waters he describes warrants him in presenting Long Island Sound as *one* of the mouths of the Hudson!! But as his "elegant map" leaves out all appellations for the waters within Sandy Hook, and for convenience has the name of "the Groote River" and its numerous aliases *out at sea*, just as it places "Zuydt River" *off the capes of Delaware*, Ogilby is considered an authority of

the first grade, *omission* to confer distinctive titles upon the waters which are the subject of discussion being regarded by the gentleman, as it was by Mr. COCHRANE, much better evidence of the "intent and meaning" of parties than positive conferment of definite appellations. It is probable, however, that had his map been on a large scale he would have given to the waters within Sandy Hook their specific title, as did Vander Donck.

In this connection the writer feels bound to notice and pointedly condemn the unwarrantable accusation brought by the gentleman, against the New Jersey Historical Society, of having mutilated, for sinister purposes, the portion of the map of Vander Donck inserted in the first volume of their "*Collections*." He says "while the words 'Port May and Godyns Bay' have been VERY DISTINCTLY inserted in the proper place, the 'names of the 'GROOTE RIVER' OUTSIDE of the former' 'have BEEN STUDIOUSLY OMITTED, and Vander Donck 'has been FORCED to say nothing whatever concerning the Hulsom, either of its mouth at Sandy Hook, or elsewhere.'" The capitals and italics are the gentleman's own, and a cause which seeks for aid through the effect of such imputations must be inherently weak. *He knows* that the map inserted in the volume referred to is only one-third of the original—just so much of it as could be brought within the limits of an octavo page, four inches by seven—and the reason why the names he refers to were not on it, was

without doubt, the same with that, the writer has had the charity to suppose, which prevented Ogilby's inserting the names for the bay, the "physical fact" that there was no room for them, if the character of the map as a *fac simile* (as far as it went) were preserved. The implication, that the New Jersey Historical Society "has quailed before the testimony" afforded by the original map, to the North River's emptying into the ocean, is simply ridiculous. It may be safely affirmed that, the Society will never be driven to ignore "physical facts" to establish any historical theory.

THE GAZETTE'S correspondent has devoted much time and labor to verifying an opinion, expressed by the writer on a previous occasion, that "with a little research a few like instances "[to those educed by MR. COCHRANE] might be "discovered," of the application of the general title of "Bay of the North River" to the expanse of waters between Sandy Hook and Staten Island. He *has* supplied "a few like instances," three or four in number, which establish nothing new, and do not controvert the fact that, what thus occasionally received a general appellation was at the same time considered, from its characteristics, devisable into smaller portions bearing specific titles. He has, besides, made diligent search among the contents of "Old Time's drag-net," and rescued from oblivion, perhaps, a score or more of extracts to prove—what? that the waters of

the Hudson enter into the ocean at Sandy Hook!

It is a favorite mode of procedure, with some disputants, to set up some fanciful and weak edifice of their own, which they would have the world believe is an antagonist's selected stronghold, and then to take great credit to themselves for demolishing it with ease. Such seems to have been the course of the "Member of the "New York Historical Society," for the writer would remind his readers, that there has been no attempt on his part to controvert the "physical fact" that the waters of the Hudson mingle with those of the ocean at Sandy Hook. *That* is a truth recognized by the terms of all the grants which make the eastern boundary of New Jersey "the main sea and Hudson's River," and he is not aware of any other way in which the two can meet, unless, the gentleman's favorite authority, Ogilby, be followed, and the junction be effected *via* Long Island Sound—the *other* mouth of the River! It is the *homogeneous character* of the waters filling "the Bay," and losing themselves in the Atlantic at that point, which is denied; and *that*, he believes is a position impregnable to the attacks of any "historical" theory. But their dissimilar character is one of the "physical facts" which Mr. COCHRANE and his coadjutor would ignore: the Hudson and the Hudson *alone* is to be recognized in all those waters; the peculiar influences to which it has been subjected in its passage to

the ocean having very materially increased its powers of appropriation and absorption, so that nothing in the shape of water can withstand its voracity—so fittingly symbolized by its “two mouths.”

Notwithstanding that Hudson himself, in the “narrow River to the westward” having different tides and currents, discovered a stream distinct from the river he subsequently ascended—although from that time to the present that distinction has been recognized by the retaining of the “baptismal names” conferred at first, such as “Kill van Coll;” “the Kills;” “*the Sea.*” or “*the river which parts Staten Island and the Main;*” the Sound;” “Raritan Bay;” “Sandy Hook Bay,” &c., names called for by the position and physical character of the waters; and that, too, without any deviation from the practice, excepting by a few individuals, in a few instances, during the period when the New York authorities were prosecuting their *fruitless* attempt to deprive New Jersey of a sea port:—notwithstanding that *every map*, conferring any title upon those waters conforms to this prevailing original nomenclature, or confers other distinctive appellations, entirely at variance with the idea that they were ever considered identical with the waters of the Hudson:—although *the Staten Island deed*, which, from its locating the island “*in Hudson Ryver,*” is so prominently presented as confirming “the character of the “waters in question,” although even that (des-

pite the forced paraphrase with which its terms are accompanied in the article of THE GAZETTE'S correspondent) places "*ye Ryver*" only on "*ye North*" and has upon "*ye South ye Bay*"—in the face of these and numerous other facts, both physical and documentary, THE GAZETTE'S correspondent gravely asserts that the *leading* Cosmographers of the time, both English and Dutch, [meaning Ogilby and Montanus, *one copying the other*, and both believing that in the New Netherlands could be seen "a kind of Beast "which hath some resemblance with a Horse, "having cloven Feet, Shaggy Mayn, one Horn "just on their Forehead, a Tail like that of a "wild Hog, black Eyes and a Deer's Neck," that fed "in the nearest wildernesses," together with "Buffles" or "Elands * * * subject "to the falling sickness," &c., &c. that these *leading* Cosmographers] concurred in the opinion that the Hudson discharged its waters through two mouths, the Narrows and the Kills;" whereas there is not a particle of evidence that they had ever heard of either passage. Take the gentleman's own adopted version of the extract from Montanus so often referred to, it reads thus : "Among the streams the Manhattan, or Great "River is by far the chiefest, as with two wide "mouths washing the mighty island Matouvacs [not Staten Island, be it observed] "it empties "into the Ocean. The Southern mouth is named "Port May or Godyns Bay ; midway lies the "Staten Island and little higher the Manhattans,"

&c. What is there in this passage to warrant any such statement as that above, as to the opinion of these "leading Cosmographers?" It is impugning the intelligence of the settlers of New Netherland to make these writers exponents of the extent of their knowledge respecting the province. As early as 1656, Vander Donck, after having examined the localities for himself, placed *the* mouth of the Hudson at its junction with the East River, and Egbert Benson and the other New York Commissioners, in 1807, frankly acknowledged that such was the "common conception in regard to it;" and, by the way, those gentlemen were so little satisfied with the *modern* "historical character" of the waters West of the island that they labored to establish *that* channel as *an arm of the "main sea,"* connecting with Hudson River in the upper bay! In January, 1664, the Chamber at Amsterdam, was so much better informed about the River than Montanus was seven years later, that we find it corresponding with the Directors and Council at New Amsterdam in relation to the "defensible condition of *the* mouth of the river, "both on Staten and Long Island," (*New York Colonial Documents*, Vol. II., p. 218.) and it is evident that, ten years after Montanus wrote, the localities were not much changed from what they were in 1656 and 1664, as we find Governor Andros, in December, 1681, mentioning Staten Island as situated "att *the* entrance or mouth of the "River to New Yorke." (*Ibid*, Vol. III., p. 310.)

In this connection it must be noticed that the "Member of the New York Historical Society" *has failed to exhibit a single document, or name a single map that confers upon the waters of Staten Island the name of Hudson River*, with the two or three exceptions, also adduced by Mr. COCHRANE, which have already been made the subject of comment, (in due time they will be again considered,) occurring nearly a century after the settlement, and having no value as proofs. But *he* should know, as well as the writer, that so far from all intelligent well-informed persons, English, Dutch and American, in 1674, considering the Hudson's River as flowing on *both* sides of Staten Island. "Hudson's narrow river to the "westward" and its connecting channel southward were uniformly referred to by other names; among the "intelligent, well-informed persons" doing so, being Governor Nicolls, who speaks of both as "the sea between Staten Island and the "main" and was so ignorant of the opinions of "leading Cosmographers" as actually to make the northern boundary of some land on Staten Island "Hudson's River AND the Kill van Cull." (*Grant to Bollen & Co., Dec. 24, 1664.*) Governor Andross even (IN DOCUMENTS THE GENTLEMAN HIMSELF QUOTES) calls the one "After Cull River" and the other "the Great Kill."

The readers patience will not be tried by the barren enumeration of other grants and other documents showing the continuous use of this nomenclature. The records of both States abound

in proofs beside those the gentleman himself has furnished ; and, without consulting many other works, an examination of the "*Calendar of Historical Manuscripts in the office of The Secretary of State at Albany*" cannot but excite surprise that he should have ventured upon the assertion that "from an early day—as early as 1643 the waters of what we call * * * * 'The Kills' * * * were considered and disposed of as waters of Hudson's River—and that, *without a single adverse witness*, the same opinion prevailed and the same action was continued until the surrender of the Colony to the King of Great Britain and its transfer to the Duke of York, in July 1674." But having on a previous occasion gone over this ground, the writer deems it unnecessary to traverse it again. Before passing to another topic however, he must be permitted to notice the unwarrantable assertion that, "the Map of the settled portion of East Jersey in 1682" in "East Jersey under the Proprietary Government" places "Constable's Hook" at the "*southwestern extremity of the neck, [Bergen Neck] to which point the waters of the Hudson would have been necessarily recognized on his [the writer's] own authority had he told 'the whole Truth' of the matter.*" This, to say the least, is in worse taste than the accusation brought against the New Jersey Historical Society, of *studiously suppressing* the title of Hudson's River from the fac simile of a part of Vander Donck's map given in the same volume. Others are left

to designate it as their sense of propriety may dictate.

"Constable's Hook" will be found, on all maps going sufficiently into detail, to be the name from the earliest times conferred upon the northern point of the *eastern entrance* of the Kill Von Kull. THE GAZETTE'S correspondent knows this fact and understands the position of the "Hook" perfectly. The youngest tyro in geography well knows that names are placed above, or below, on the left, or on the right of the localities to be designated as convenience prompts; and it will scarcely be believed that the above grave charge is based upon the circumstance that, the engraver of the map placed the name on the *left* of Constable's Hook extending of course *from* the southwestern extremity of the neck *towards* the Hook. If such a statement as that above quoted is warranted on such grounds, it might with equal propriety be said that Vander Donck located "New Amsterdam" on the west side of the Hudson, because the name stretches across New Jersey; or that Mr. Brodhead intended to place "Paulus Hook" on Newark Bay, or "Communipau" on Staten Island, because their names commence at these points on his map; or that the engineers, who prepared the sketch of the Harbor of New York for the Coast Survey Report of 1857, in placing "Constable's Hook" in a similar position to that which the words occupy in the map first referred to, had some reference "to the claims of modern

"New Jersey." All the proofs of the Hudson's "debouching" through the channel between Staten Island and the main, which can be deduced from such puerile assertions and arguments, the "Member of the New York Historical Society" is at liberty to appropriate ; and also all he may find in the fact that Bergen County was "to contain *all the settlements* between Hudson's river and Hackensack River, beginning "at Constable's Hook, and so to extend to the "uppermost bounds of the Province northward, "between the said Rivers." Those *settlements* being "Pembrepock," "Communipaw," "Paulus Hoeck," "Bergen," "Hobuk," and perhaps one or two others, the nearest, "Pembrepock," being two or three miles *north* of Constable's Hook.

Allusion has been made to the unbroken testimony borne by MAPS to the fact that distinctive appellations have always been borne by the waters in question, and that such appellations have never indicated any identity with Hudson River ; and attention is now directed to the following schedule of a series of the more prominent among them, covering the whole period from 1614 down, upon which they appear, whenever *any* names are conferred.

1614. Five years after the discovery of the River by Hudson, appeared the first map of the country of which we have any knowledge. On it the waters are not named.

1616. Two years later we have the "Carte

"Figurative" referred to by Mr. COCHRANE. On this, what is now known as Raritan Bay, has its distinctive title of "Sand-Bay."

1621. A Map of "Americæ Septentrionalis Pars" was published by A. Jacobz, on which the same title appears for that bay.

1631. An Italian Map by Lucini, supposed to be of this date, has on it "Sand Bay Golfo" to designate the same waters.

In 1648, as appears from "Plantagenet's New Albion," (p. 48.) the bay was known as "Sand-bay Sea;" and subsequently, as has been seen in this discussion, it became known, in wholley or in part, as "Coenraed's Bay" (as in the map of Joannes Jansones, of uncertain date,) "Port May," "Godyns Bay" &c., and in—

1656. On Vander Donck's Map, the waters between Sandy Hook and Staten Island are named "Port May or Godyns Bay;" and so are they on a somewhat later Map by Matthæi Seutteri.

1671. Ogilby's and Montanus' Map gives no names to the waters within Sandy Hook, but by titles outside indicates that the Hudson River there empties itself in the Ocean.

1683. In this year John Reid was sent from England for the purpose of surveying a portion of East Jersey, and we have the result of his labors, in part, in "*A Mapp of Rariton River, Milstone River, South River, Raway River, Bound Brook, Green Brook, & Cedar Brook, with the Plantations thereupon &c., &c.*" On this valuable illustrative document, appearing

thus opportunely, being contemporaneous with the last grant of the Duke of York to the Twenty-four Proprietors, we have "The Sound," between Staten Island and the Main, and for the waters South of the Island, "Part of Rariton Bay."

From the appearance of Reid's Map, down to the Revolution, *on all maps* giving any titles to these waters, the same system of nomenclature is followed; on some of them "Sandy Hook Bay" appearing in connection with "Raritan Bay." The best of these were the following:

1760. Captain Holland's Map of "New York, "New Jersey and Part of Pennsylvania; and in—

1776. Governor Pownal's improved edition of the same map. On both of these we have "Raritan Bay," and on the last, in addition, "Sandy Hook Bay," "the Sound," and "the Kills."

1779. With this year came the highly finished Map of the "Province of New York," by Claude Joseph Sauthier, "*compiled from actual surveys deposited in the patent office at New York,*" on which we find that "the infectious waters of "the Raritan" are allowed full sweep, as well as "Sandy Hook Bay," and "the Kills;" and "York Bay," has the position of the present "Lower Bay."

In 1778 and again in 1780 the French government issued correct and well executed maps of these waters, upon which appear the same intrusive titles.

It is unnecessary to trace this series of proofs to a later period. It is evident that these distinctive appellations did not originate in modern times, were not the result of "accumulating ignorance," as asserted by Mr COCHRANE, or of any "design" except to name distinctly, and distinguish properly the waters to which they apply; and if not universally acknowledged, as correctly applied, why is it that *not one map* can be found, the maker of which, has been willing to stultify himself so far as to identify those waters with Hudson River, by conferring its name upon them? All *geographers* "leading" or otherwise, have thus endorsed the "physical fact" that Hudson's River "debouches" only through the channel eastward of Staten Island; and one, if not more,—Homann of Nuremberg,—who lived about the middle of the seventeenth century, with a "design," evidently, to sustain the claims of modern New Jersey," actually colors Staten Island with the same tint he gives New Jersey. A sensible fellow was Homann: he believed in "physical facts," and did not adopt for a text book, either Montanus or Ogilby.

Whether previously initiated, or not, into the mysterious processes of absorption, by which sundry portions of New Jersey, as such, have disappeared from view, every one attending to this discussion will have seen that a failure to establish the existence, "historically," of what the natural configuration of the land and water has made *physically impossible*, necessa-

rily involves the destruction of any theoretical attempt to account, on moral or legal grounds, for the possession of Staten Island by New York, except through the concessions of the inter-State treaty of 1833. So clear are the terms of the grants as regards *all* lands *west* of Hudson's River that, unless it can be made to run "historically" where it does *not* run naturally, there cannot be a shadow of pretence to title save by the effect of that instrument. Hence the anxiety to establish that point; but, in order to lessen the effect of incontrovertible facts which prevent such a result, many irrelevant matters have been introduced, to confuse the enquirer after truth, leading to a wonderful array of so-called authorities having little or no reference to the simple proposition of Mr. COCHRANE, the refutation of which is admitted. To enter upon an examination of all these would entail upon the writer a vast amount of labor, with no possible accruing advantage to the reader. Two or three points, however, thought by THE GAZETTE'S correspondent to be of particular importance will be noticed, to show how, in reference to them as to every thing else, he has failed to establish his views.

He raises for example another flimsy structure, and making a great demonstration, brings column upon column to bear upon it, as if the fanciful assumptions and imaginary positions he combats as entering into its composition origi-

nated with, or were verily taken by Jersey men : expending an immense amount of labor in proving that Staten Island has always been in the possession and under the jurisdiction of New York. Who doubts it? *That* is certainly an "historical" fact which no one questions. If it had not been, whence, and to what end, this discussion? The writer concedes the point fully, and thereby saves himself and his readers an interminable journey through a labyrinth of contradictory statements and conflicting authorities, which the gentleman has skilfully planned—and within which he is left to rove by himself at his pleasure. Staten Island has always been in the possession of New York, despite of every proper interpretation of the grants to New Jersey, and having shown that the course of the Hudson is on the eastern side of the island, the unjustifiable character of that possession is fully established.

An attempt is made to substantiate Mr. COCHRANE's assertion that the "initiation of New Jersey's enterprising encroachments" upon Staten Island, took place in 1681; although such an assertion is entirely inconsistent with the fact, as it is claimed to be, that the island was "adjudged" to New York in 1669. How happens it that, as shown by the gentleman himself, Governor Carteret should have made a "contingent grant of land on Staten Island," in 1668, if no claim to it was set up before 1681? How happens it that Governor Nicolls should

have announced the item of intelligence he did if the question of title was not then in abeyance?

The writer regrets that he is obliged to differ from his friend Mr. BRODHEAD, as to the importance to be attached to the statement of Governor Nicolls. It is with diffidence that he presumes to question the deductions of one so well informed upon all points of our colonial history, but he nevertheless is of the opinion that, while unsupported by any corroborative testimony, Nicolls' declaration, when his position is considered, amounts to nothing in the face of constantly recurring indications of a still asserted, unabandoned title to the island on the part of New Jersey. It is a noticeable fact also that, when the claim was more vigorously prosecuted, not the slightest reference is made by any one to this authoritative settlement of the question years before. On a previous occasion it was satisfactorily shown that the peculiar position in which Governor Cartaret was placed on his arrival at Elizabethtown, in 1665 the subsequent attempt at an exchange of territory, the reconquest by the Dutch and the temporary reëstablishment of their authority and other causes, operated to postpone any positive enforcement of the right of New Jersey; but though dormant it was ever considered valid, and was never surrendered until 1833. The wise course of the Provincial authorities in avoiding all collisions with New York by refraining from any forcible attempt to obtain possession, which would, un-

doubtedly, have proved fruitless from the greater power of that province, and in not pretending to a *quasi* possession by erecting the island into a county, in 1683. is now assumed to be "a very significant fact," arguing that "Staten island" was not considered at that time a part of New Jersey even by its own Assembly." Under the benign teachings of New York, it is not likely that New Jersey will ever be guilty again of such a mistake as not to resist aggression from the start.

It is a circumstance worthy of note that, not a document is known to exist signed by the Duke of York himself, which calls in question the right of the Proprietors of East Jersey to the island: and not one, professedly issued under his authority, can bear any such interpretation, for more than twenty years after the transfer to Berkley and Carteret, and then not until his relations to New Jersey, as we shall see, were materially changed. He was ever ready to confirm his original grant of *all the lands west of Long Island and Manhattan Island*, and document after document was issued for that purpose; for whatever may have been his faults and vices, and great they undoubtedly were, it is conceded that the Duke was sincere in his friendships. Those who would feign convince themselves and others that, "the opiates of John Scot artfully discharged upon his drowsed senses," or any other influences foreign to his own unbiassed inclinations, moved him to part with New Jersey,

between him and both Berkley and Carteret—the former his governor in youth and associate officially and otherwise through life ; the latter one of his most intimate and constant companions, of whose hospitality he frequently partook—which led him to refrain from any act that could be construed as unfavorable to their interests. Through good and through evil repute he appears to have ever been true to them. What greater evidence could he have given of his disposition to quiet any adverse pretensions to New Jersey, or of his “intent or meaning” in relation thereto, than the repeated grants by which he confirmed the original transfer? Note too, the prompt repudiation of Andros’ proceedings towards Governor Carteret, and the granting of the deed to the younger Sir George, in 1680, (of which more hereafter,) immediately on receiving Sir William Jones’ opinion, to which reference has been already made, that, under the grants to Berkley and Carteret there was “noe reservation of any profit or soe much as “of Jurisdiction.” Which opinion, by the way, and the action of the Duke under it, explains the circumstances leading to the passage of the act by the New Jersey Assembly, in 1679, which forget or overlook the close relations existing THE GAZETTE’S correspondent so laborously misconstrues as manifesting “without complaint or “dissent * * * a degree of resignation to “an unavailable fate, consistent only with a corresponding knowledge that resistance to that

" fate would be useless, that the Jurisdiction of
 " the Duke and his servants OVER THOSE WATERS
 was unquestionable." Well, *it did not remain
 unquestionable very long as Sir William Jones and
 the Duke made manifest.* The act referred to,
 guarantied from loss, to the extent of £150, the
 owners of any vessel that " should be by any of
 " the government of New York arrested, detained,
 " condemned and bona fide made prize of, for
 " the only cause of trading in this Province and
 " *not entering and clearing at New York, &c.,*"
 which was nothing more nor less than one mode
 of doing what the Merchants of New York did
 themselves, viz.: opposing the payment of the
 Customs imposed by the Duke ; (*See Colonial
 Documents III., pp. 217, 246, 286, 289, &c.,*) only
 with far greater reason, inasmuch, as Sir William
 Jones says, the Duke had reserved in New Jersey
 " neither profit nor Jurisdiction." Yet the
 " Member of the New York Historical Society " *devotes a whole column to prove that this action
 of the New Jersey Assembly, so consistent with
 a proper regard for their rights and calculated to
 bring about a legal decision thereon, was an admis-
 sion of the Jurisdiction of the Duke of York and
 his servants over " the waters in question."*

Returning from this digression let it be noted
 that in all the grants of the Duke of York, New
 Jersey included *all the lands* west of Long Island
 and Manhattan Island and its eastern boundary is
 ever the same : the main sea and Hudson's River.
 As it was in 1664, so was it in 1672 ; so was it in

1674 ; so was it in 1680 ; so was it in 1682 ; so was it in 1683. It was certainly ever his "intent and meaning" that the veritable Hudson, wherever it might really run, and *not* any other stream so baptized for a purpose, was to be the boundary ; and *he* could find no land west of Long Island and Manhattan Island which was not *also* west of the river. Is it at all probable that, in the face of a continued claim to Staten Island, such a material deviation from that line, as its excision from the lands originally conveyed, should have been intended by him without some indications of it appearing in a change of the description ? It is very evident from the correspondence of Gov. Carteret with the governor of New York in 1681, in which the claim to possession is so distinctly made, that a more definite understanding with the Duke of York in relation thereto had been arrived at during the preceding year. And this is confirmed by the letter of Sir John Worden, the Duke's Secretary, written to Gov. Andros on 6th November, 1680, which has been before alluded to. He informs the Governor that his Royal Highness had been pleased "to confirm and release to the Proprietors of both "moieties of New Jersey *all their and his right to* "ANYTHING *besides the rest reserved which* HERETOFORE MAY HAVE BEEN DOUBTFUL whether as to "government, or public duties in or from the "places within their grants." This had reference to the deed to be prepared for Sir George Carteret the younger—but as has been already dem-

onstrated, it is not necessary to go further back than the date of the deed to the Twenty-four Proprietors in 1682. This was granted in accordance with the request of the Earl of Perth (*Colonial Documents*, III, p. 329) for the express purpose, as stated in the instrument itself, of "better extinguishing all such claims and demands" as his said Royal Highness, or his Heirs might "anywise have" to East Jersey. The peculiar fullness of this grant has been already made the subject of comment, but inasmuch as the "Member of the New York Historical Society" has discovered some flaws therein *which have escaped the learning and accumen of all the statesmen and lawyers of both England and America*, it is well to refer to the document again. The gentleman recognizes the fullness of the rights and powers granted, but observing that the Duke in conveying them uses the phrase "so far as in him lyeth," he considers the whole instrument simply as the Duke's "confirmation as Lord Paramount of the Country, [or Mesne Lord as he subsequently styles him] of the change of Lessees of East Jersey and HIS PERMISSION TO NAVIGATE THE WATERS 'LEADING UNTO OR LYING BETWEEN' THE LANDS THUS LEASED TO THE PROPRIETORS, FROM WHICH THE FORMER LESSEES HAD BEEN CAREFULLY EXCLUDED." This exclusion is denied, but how confirmatory, is this very admission of the gentleman, of the fact that the Duke was desirous to remove all grounds of disputation as to the rights of the Proprietors. But it is said that he had

already granted all these privileges to the younger Sir George and therefore had nothing left to convey. Let us unravel the truth of the matter.

It will be remembered that it was broadly asserted that "all islands" "bays" "marshes" "soils" and various other concomitants of East Jersey had not been conveyed by the deed of 1674 because not specially enumerated, yet no one can doubt the "intention" of the Duke of York to convey all the lands west of Long Island and Manhattan Island and all belonging to them as fully as he had himself received them from the crown; and it is somewhat curious that the Duke's Secretary in writing to Wm. Penn, (*New York Colonial Documents*, III, p. 280) should have expressly nullified any such doctrine as that the failure to specify islands necessarily left them unconveyed—"neither can I," "Judge" said he, referring to Penn's Grant, "how far such an enumeration of particulars can include any more than ye genll Boundaries doe"—the insertion of "isles," subsequently, not necessarily adding any thing to the limits of the grant. But, notwithstanding the assertion made by the "Member of the New York Historical Society," at the outset, that these items of property were *never* relinquished by the Duke, we find him subsequently admitting that *they were transferred* to Sir George Carteret's grandson and heir in 1680; an admission forced from him by the dilemma in which he is placed by the fullness of the grant to the

Twenty-four proprietors. Unless those rights which he claimed to be remaining "with the Duke entirely unimpaired" could be got rid of, there was no way of avoiding the fact of their transfer to the Twenty-four. It will be seen how slight an impediment to their title was this presumed prior grant.

There seems to be room for little doubt that the discussion of the Customs question and the decision of Sir William Jones had drawn the attention of the Duke's legal advisers to some of the dicta respecting the rights of parties having a navigable stream for a common boundary, and among them the plain proposition that even when the right of jurisdiction between two countries or states thus situated extends to the middle of the stream only, *the right to use the whole stream* for the purposes of navigation, trade and passage, must exist as a right common to both parties whether expressly granted or not; for in the grant to the younger Sir George, and subsequently in that to the Twenty-four proprietors, the Duke not only conveyed the Islands, Bays, Rivers, Waters, &c., but adds "as also the *free use* of all Bayes, Rivers and Waters leading unto or *lyeing* between them;" in this, as in all the other documents emanating from him, manifesting his desire to remove all grounds for cavilling or disagreement. No matter whether the principles of maritime law gave the privilege or not, he was willing the grant should be made so plain that all might understand his "meaning and intent."

Sir George Carteret in his Will "to the intent" he said "That my Debts, Funeral Charges, Gifts, "and Legacies, may be effectually paid"—gave to five distinguished courtiers "their Heirs, Executors, and Administrators, the whole Estate, Interest, Term and Terms, for years or otherwise "which I or any other person or persons in Trust "for me have or hath" * * [along with other property] * * "all my Plantations in "New Jersey * * upon this Trust and Confidence that they and survivor or survivors of "them &c., * * do make sale of all the said "premises, and out of ye Moneys that shall arise "upon such sale, pay and discharge such of my "said debts &c"—any surplus to be for the benefit and advantage of his grandson George, the son of his deceased son Philip.

Sir George died early in 1679 and his Trustees on the 5th or 6th March, 1680, conveyed his "Plantations in New Jersey," to Thomas Cremer and Thomas Pocock. The precise terms and object of this transfer are not known as the instrument itself has not come down to us, but it is evident that it was considered as vesting in them the full title to the province. It appears also that for some time its existence was not known to Lady Elizabeth Carteret or the Duke of York, or the latter would not in September 1680 have made the grant he did at that time to Sir George's heir. That grant, as we have seen, was issued by him of his own accord, without any prompting from any one, certainly without the know-

ledge of his Trustees, purely out of regard for the interests of the family of his old friend Sir George, he having previously given a new grant of similar import for West Jersey. Although the document was communicated by Lady Elizabeth to Governor Carteret, and made the basis of his action in 1681 as before adverted to, yet it was *rendered inoperative by the fact that the title to the province had been for some months in other parties*, and the "Member of the New York Historical Society" is the first person in either hemisphere that has considered it as possessing any legal force. The Trustees of Sir George—including the Earl of Bath, the young Sir George's father-in-law, who would be likely to appreciate the value of such a document if it had any—the Earl of Sandwich, his maternal grandfather,—Messrs. Cremer and Pocock, Lady Elizabeth Carteret, the original twelve Proprietors, the second twelve—and the Duke of York himself all ignored the document by the execution and acceptance of the deed of March 14, 1682, in which they interchangeably, under their hands and seals, certify to all the prior grants connected with the province, but among which the deed of 1680 does not appear. Moreover a document from the Board of Trade to which is appended the names of Sir Philip Meadows, Sir John Pollixfen, Abraham Hill, and Matthew Prior, whose acts, judging from the credence THE GAZETTE's correspondent gives to them—are worthy of consideration, gives the following endorsement of the deed of

1682: "He the said Duke of York did by Indenture dated the sixth day of August, 1680, grant and confirm the Province of West New Jersey, with all the Appurtenances thereunto belonging to Edw Byllynge, &c., * * * and *did in like manner by Indenture dated the 4th day of March, 1682, [nothing being said of the deed to Sir George the younger,] grant and confirm the Province of East New Jersey, with all the Appurtenances thereto belonging, to James Earl of Perth, William Penn, Esqr., and several other persons, in whom the title to the same then was, and to their Heirs and Assigns forever—and by each of the said Indentures did likewise give, grant and assign unto the aforesaid respective Grantees or assigns ALL AND EVERY SUCH, AND THE SAME POWERS, AUTHORITIES, JURISDICTIONS, GOVERNMENTS, AND OTHER MATTERS AND THINGS WHATSOEVER, which by the forementioned respective Letters Patents, or either of them, were granted or intended to be granted to be exercised by him the said Duke of York his Heirs, Assigns, Deputy Officers or Agents."* (Leaming & Spicer, p. 603.)

But how about the phrase "So far as in him lieth?" If anything more than a legal technicality, it simply means this: that the Duke having already conveyed *the whole* of New Jersey in common to Berkley and Carteret as joint tenants, and had subsequently given deeds in severalty for both East and West Jersey with different boundaries, the propriety of his giving

another deed to other parties might be questionable. But the writer is happy to furnish a solution of the problem by the Commissioners of New Jersey in 1763, the gentlemen whom THE GAZETTE's correspondent compliments for their good judgment. They say in their Brief, (p. 21.)

"In 1682 East New Jersey became vested in Twenty four Proprietors, who thought proper to procure the Duke's Confirmation to them. In this Confirmation, *the Duke recites his first Grant to Berkley and Carteret, and the partition of New Jersey, and, 'as far as in him lieth,' grants and confirms to the Twenty-four Proprietors, all that Part, Share and Portion, and all those Parts, Shares and Portions, of all that entire tract of Land and all those entire Premises, so granted by his Royal Highness unto the said John Lord Berkley and Sir George Carteret, and their Heirs, as in, by, and upon the said Partition, was and were vested in the said Sir George Carteret; so that the words 'so far as in 'him lieth' did not imply any Doubt in the Duke, whether he had authority so far; but whether he had a right to grant at all, as he had before conveyed all New Jersey to Berkley and Carteret,' &c.*

But why should the patience of the reader be longer trifled with to establish, what no Court in Christendom has ever doubted — (and the document has stood the test of an examination by the most distinguished on both sides of the Atlantic) — the validity, to the full extent of its tenor of the grant to the Twenty-four Proprietors. "Historically" and legally it will stand unaffected by any assaults from those, who finding in its ample provisions a most perfect title to all

the lands "lying and being to the westward of "Long Island and Manhattan Island," would strive to ignore its efficiency by new discoveries in law and physics.

Naturalists tell us that some odd fishes, when endeavoring to flee from some corner into which they may have been driven, have the faculty of ejecting into the waters an extraneous substance, which enshrouds them in such obscurity, and so befores both pursuers and spectators, that they escape detention. Such seems to have been the intention of the "Member of the New York "Historical Society" on introducing, towards the close of his article, the subject of the right of the Province of East Jersey to a sea-port. But he will meet with as little success through this device as through others he has adopted. He cannot be allowed to escape in a mist of his own creation when it is composed of such materials as the following statement : "The Proprietors, whose "principal purpose in purchasing the lands and "settling them was to make themselves independent on matters of Government of all "other persons," [not certainly of the Crown, for the right of appeal was expressly provided for,] "abandoned the project and surrendered "their 'pretended rights' to the Queen : while "Perth Amboy was 'overshadowed by New "'York,' and New Jersey, ON ALL MATTERS OF "COMMERCE, THENCEFORTH, BECAME IN FACT, AS "WELL AS IN LAW, ENTIRELY SUBORDINATE TO NEW "YORK."

The writer has no desire to draw upon the courteous vocabulary of THE GAZETTE's correspondent. It is presumed from his animadversions upon others that he never "*suppresses*," never "*mutilotes*," never hesitates to tell "*the whole truth*," never "*quails*" at any adverse testimony, and it may therefore be attributed to an oversight merely that he should not have discovered and communicated to his readers the fact that IN EVERY CASE *in which the right of East Jersey to a sea-port was endeavored to be wrenched from her*, THAT RIGHT WAS ESTABLISHED—AND EVERY ATTEMPT *on the part of New York* to impose restrictions upon her Commerce, however successful for a time through superior force, *proved eventually abortive*. A statement to this effect has already been made, but it seems a more thorough refutation is needed.

The first occasion on which the rights of East Jersey in these respects were attempted to be encroached upon by New York was, as we have seen, during the administration of Andros, in 1680; and we have also seen that the manœuvres of New York were nullified by the opinion of Sir William Jones and the execution of deeds, ordered—"plainly to *extinguish ye demand of any Customes, or other dutyes* from ym "[the Proprietors] save ye rent reserved as at "ye first." (*New York Colonial Documents* III., p. 285.)

The next attempt was made by the indefatigable Dongan, in 1684, through reiterated intima-

tions of what "might, could, would, or should
 "be" done, to curtail the actual or presumed
 advantages of East Jersey. The Commissioners
 of the Duke of York's revenue were very willing
 to receive from him suggestions that might tend
 to increase that revenue, but, notwithstanding
 that the transfer of East Jersey to others natu-
 rally lessened the interest of the Duke of York
 in the preservation of the rights he had origi-
 nally conferred, yet Dongan's devices availed
 little until the relations of the Duke to the Pro-
 vince became changed by his succeeding to the
 throne as James II. early in 1685. That event em-
 boldened Dongan greatly. He found there were
 "great inconveniences in having two govern-
 "ments upon one river:"—that it "would doe
 "well to look into the last patent of East Jersey
 "to see whether shipping bee obliged if they
 "come into Sandy Hook to make entry at New
 "York, and informed the Board of Trade" that
 "*we in this government look up on that Bay* that
 "runs into the sea at Sandy Hook to bee Hud-
 "son's River, therefore, there being a clause in
 "my Instructions directing mee that I cause all
 "vessels that come into Hudson's River to enter
 "at New York, I desire to know whether his
 "Majy intends thereby those vessels that come
 "within Sandy Hook :"—and he furnishes the
 "Member of the New York Historical Society"
 with an assortment of choice extracts which, with
 others of like character, are distilled in his alembic
 into first class authorities, although any candid

and impartial historian would discard them as of little weight, emanating as they do, from the chief parties in interest, the aggressors, and being entirely *ex parte* in their nature.

Finally, Dongan becoming impatient, informs their Lordships "I caused a vessel which came "to Amboy to come hither and enter." The Proprietors thereupon took the liberty of complaining to the King of this manifest infringement of his own conferred privileges, and after a fruitless attempt by the Board of Trade, to whom the matter was referred, to get rid of a decision by sending the complaint to Gov. Dongan to be answered, their Lordships by an order of Council on 12th of July, 1687, were *commanded* to give the Proprietors a hearing, the result of which was the order of Council dated 14th of August, 1687, which the gentleman gives at length as most damaging to the East Jersey claims! *That order on the contrary sustained them in every particular.* It confirmed New Perth as a Port of Entry, and Gov. Dongan was delicately informed that "His Majy is "pleased, upon further consideration, to direct us "to signify his pleasure *unto you* that you permit all ships and vessels bound for New Perth "in His Majestys Colony of East New Jersey to "goe directly thither without touching at New "York or being carried thither until further "order." Thus did James the Duke of York confirm, as James II., the grant of 1682-3 by recognizing the right of the twenty-four proprie-

tors in the waters which originated this discussion. But the gentleman by his capital letters would convey the idea that this order was a direct recognition of the authority of *New York* over New Jersey, because the person to collect the customs should be appointed by the Governor of New York or by "*the Receiver General of His Majestys Revenue*:" losing sight of the fact that New Jersey then was, as New Jersey has ever been, an upholder of law and order, loyal and true; the Proprietors ever inculcating "submission and obedience to the King" Four years before the issue of this order, they instructed their Deputy Governor "to observe the Act of Navigation, and to see that it be infringed in nothing as to what relates to the Kings Customs or otherwise." (*Leaming and Spicer*, 171.) It was not the payment of duties to the King they objected to, but the restrictions imposed by New York upon their commercial projects, and those restrictions were ABSOLUTELY REMOVED by this order. Thus ended the second attempt at subjugation.

The next attempt, and the last demanding notice, was made during the administration of Lord Bellamont as Governor of New York, and furnishes the text on which THE GAZETTE's correspondent hangs the erroneous commentary which has been quoted. The first steps towards this aggressive action commenced under Governor Fletcher. The Assembly of New York undertook, again, to impose duties upon the imports

into East Jersey which, as Chalmers says, (*Annals*, p. 626,) "could be as little supported by "any principle of equity or law" as those denounced and abandoned in 1680, and the proceeding, of course, aroused the opposition it deserved.

In 1694 the Assembly of New Jersey—it may have been in some spirit of retaliation—passed an act for better regulating the trade of the Province which, although duly subservient to the "Act of Trade and Navigation" conflicted with the interests of New York, much to the disturbance of Fletcher's equanimity; and he intimated to the Lords of Trade that it was the intention of the Jerseymen to make "New Perth" a free port: by which it is evident he considered the non-payment of duties to New York equivalent to paying none at all. Nothing definite, however, seems to have resulted from Fletcher's complaints, and in 1696, the right of East Jersey to its port was recognized by the appointment, by the Commissioners of the Customs in England, of a Collector for Amboy. The Proprietors, however, were anxious to have an end put to these constantly recurring annoyances, and in April, 1697, they obtained from Sir Creswell Levinz, and, in June of the same year, from Sir John Hawles—both "Crown Lawyers," and the latter subsequently an Attorney and Solicitor General—concurrent opinions "*that no customs could be imposed on "the people of the Jerseys otherwise than by act*

"of Parliament or their own Assembly." (*Chalmers Annals*, p. 626. *Analytical Index, New Jersey Documents*, pp. 15, 16. *East Jersey under the Proprietors*, p. 141, &c., *Contributions to East Jersey History*: p. 295.) For several months, the various officers of the crown were pressed for some ultimate and decisive action which might relieve New Jersey from the aggressions of New York, with varying success. There was evidently a wide difference of opinion among these functionaries; for while in one month, October, 1697, the Commissioners of Customs ordered Mr. Randolph, the Surveyor General of Customs in America, to appoint officers to collect duties at both Amboy and Burlington—thus *sanctioning* as Lord Bellamont says, in one of his dispatches, the establishing of two Ports that were to prove "a destruction to the trade of New York"—the next month, November, the Council, upon a representation from the Board of Trade issued the order, upon which the "member of the New York Historical Society" dilates, denying the privileges of a port to Amboy, and exhibiting greater ignorance of the localities than the presumed intelligence of the members would lead us to consider possible. But there was an object in view to effect which the means employed, needed not, they thought, to be closely criticised. With the flight of James II. from England, in December, 1688, and the recognition of William III. as the Sovereign, in February, 1689, old things had passed away, all, so

far as the personal relations of the Sovereign to New Jersey were concerned, assumed a new aspect. The questions in which she was interested had not reference thereafter so much to titles to, and boundaries of, the domain conveyed by the Duke of York, as to the extent of the Sovereignty he had a right to transfer with that domain. The surrender of *the government* to the crown was the object sought, and hence arose many of the delays and disappointments to which the Proprietors were subjected in relation to the Port question: they "thought it best to join both together" as the Lords of Trade said in one of their letters to Lord Bellamont, supposing that rather than endanger the one the Proprietors would abandon the other, but their schemes were destined to be frustrated: for although the government was eventually surrendered by the Proprietors, their right to the Ports was *previously conceded and legally established*. It came about in this wise. The instructions of Lord Bellamont, who entered upon his duties in April, 1698, were in accordance with the views enunciated by the Council as above stated, and he bent all his energies to enforcing them. Governor Basse, in New Jersey, as firmly asserted the rights of that Province, and his bold determination to sustain them seems to have excited no little surprise among the officials in England. The intelligence of his refusal to heed the order of Council, reached Secretary Popple in December. He at once

wished to know what the Lords of the Treasury had heard about it, and was desirous to have the Commissioners of the Customs inform the Board of Trade to what conclusions they had come. Well, in February, 1689, the Commissioners came to the same conclusion they had evidently arrived at before, that the inhabitants of East Jersey *should be released from the payment of duties to New York*. In March, Mr. Secretary expressed a wish that the Lords of the Treasury would inform him what they intended to do, and eventually—not to prolong the narrative unnecessarily—that course was adopted which was entirely *in accordance with the wishes of the Proprietors* leading to a result DIRECTLY OPPOSED to the *opinions of the Lords of Trade*, for which they are so highly complimented by THE GAZETTE'S correspondent. "A careful perusal of "the 'opinion' of the Board of Trade" says the gentleman, "and of his Majesty's order in "Council *which was based on that 'opinion,'*" "would shed some light on the ridiculous pretences of some who have assumed to speak in "behalf of the 'pretended rights' of East Jersey, on other subjects as well as on this." Indeed! Well an opportunity was afforded, not long after the circumstances above narrated, to a dignified body in Westminster Hall to "peruse" that opinion, and to *express an opinion* upon it, and we will see what light *that* opinion shed "on "the ridiculous pretences of some."

Lord Bellamont, "feeling himself sure of his

Majesty's" support, commenced a course of procedure which resulted in the forcible seizure of a vessel belonging to Governor Basse himself, lying in the harbor of Amboy. A suit was brought *in the Court of Kings Bench, to recover damages for this illegal seizure*, in which the whole question as to the right of East Jersey to a port was discussed; and the Court so far from finding that "the rights and privileges of New York" had been "infringed" rendered a *verdict in favor of Basse* for several thousands of pounds. Lord Bellamont therefore found it necessary to change the tone of his correspondence considerably. "Your Lordships directions to me," he wrote in October, 1700, "will not now need to be complied with, *since the Proprietors have carried the cause in Westminster Hall and obtained a freedom of port for Perth Amboy*," and again in November, he said, "Mr. Basse has had great good fortune in his trial, upon the account of my seizing the Ship Hesther, at Perth Amboy in East Jersey, to have recovered *such great damages of the King * * * **" "with what conscience such extravagant damages were awarded for that ship is more proper for your Lordships enquiry than mine." Doubtless their Lordships did enquire, and became satisfied that New York had not "within the capes" the supremacy they had been foolish enough to claim for them. Thus was the right of the Proprietors of New Jersey to the full enjoyment of Commercial Ports within their re-

spective provinces FULLY ESTABLISHED, and what becomes of the arrogant assumption of the "Member of the New York Historical Society" that "*New Jersey on all matters of commerce, thenceforth, [after the order of November, 1697,] became in fact, as well as in law, ENTIRELY SUBORDINATE TO NEW YORK?*" On the contrary, from that time to the present there has not been a period in which the commercial relations of East Jersey have not been *entirely independent* of New York: being subordinate only to the will of the common Sovereign.

The writer has not thought it necessary to burden his pages with references to authorities for all the individual facts stated, bearing upon this point as, (thanks to Dr. O'Callaghan's well-constructed Index,) those not supported by the specified works he has referred to may be *readily* found sustained by *overlooked* pages of the New York Colonial Documents. Neither has he thought it necessary to enter upon a discussion as to the precise *nature* of the title given by the Duke of York to the grantees of East Jersey, as the question has nothing to do with the matter at issue. He will say, however, for the satisfaction of THE GAZETTE'S correspondent, that if in error (as he may have been, not being "learned in the law") in styling that title a "fee simple," he was led into it *by the Duke of York himself*, who states in his grant to George Carteret the younger, that the "*fee simple of Lord Berkeley's Moyetye*" was at that time in Messrs. Penn, Laurie and

Lucas. Both moities were held by the same tenure, and the Duke, or his legal advisers, therefore *intended* to convey a fee simple title or those individuals could not have had one. "Intent and meaning." it will be remembered, were to receive particular *attention* in this discussion. But as to this matter of title it is enough to know that "ALL the lands to the westward of "Long Island and Manhattan Island" with their "islands, bays, rivers, waters, &c.," and the "free use of all bays, rivers, and waters leading into "or lying between the said premises" were conveyed, or, if it suits the gentleman better, were *intended* to be conveyed by the Duke "IN AS FULL "AND AMPLE MANNER" as the same were received by him both as to soil and government; and Charles II himself, as we have seen, declared the grantees to be "ABSOLUTE PROPRIETORS AND GOVERNORS THEREOF." If subsequent sovereigns thought he overstepped his prerogatives in so doing, that fact does not militate against the "intent and meaning" of the grants as interpreted by the Duke of York and himself.

The reiterations of the "Member of the New "York Historical Society" to the effect that "Staten Island and the waters in question were "reserved" at any time, are utterly unsubstantiated. They are based upon an assumption, which has been denied throughout this discussion, that Hudson River runs *west* of the island; an assumption which he admits has been disproved by "physical facts" and which the

writer holds has been disproved also by "historical facts." To verify the gentleman's assertions, he must first make it apparent that neither island nor waters "appertained" to New Jersey, which he has not yet succeeded in doing.

The writer is now done with this controversy. He was induced to enter upon it, and led to continue it, solely from a desire to relieve his native State from the imputations and aspersions cast upon her, and he regrets that her defence could not have been confided to abler hands. The results elicited are as follows :

I. It was asserted that "the Hudson River empties itself through its two mouths the Narrows and the Kills into the Bay of New York." He has shown that this *never* was and *never will be true*, inasmuch as not a drop of the water of the Hudson flows either way through the channel west of Staten Island ; and *this has been acknowledged by his opponents as an incontrovertible "physical fact"*

II. It was asserted that the Grants of Charles II. and the Duke of York in 1664, were rendered null and void by the reconquest by the Dutch in 1672 and other causes : He has shown that neither the King nor the Duke ever called in question their validity, but were ever ready to give any other guarantees requested of them.

III. It was asserted that the Proprietors of New Jersey derived their rights *SOLELY* through the grants of 1674. He has shown that subsequent grants, more precise, more full, and more

complete, particularly on the points in which those of 1674 are asserted to be deficient, were subsequently given for the very purpose of removing all doubts and quieting all disputes as to the "intent and meaning" of the grantors; and moreover, that these subsequent grants have repeatedly been recognized in courts of the highest character on both sides of the Atlantic as conferring all the rights and privileges claimed by New Jersey through them, and that the ultimate decision of the Supreme Court of the United States upon the mutual rights of New York and New Jersey under them would have long since been obtained had not New York *refused* to submit to that Court the questions at issue.

IV. It was asserted that the Duke of York in 1674 retained to himself certain powers of government, and certain portions of the tract previously conveyed, which became thereafter part of his Colonial possessions and "are still to be considered 'historically' as belonging to 'the State of New York.'" He has proved under James' own hand and seal, that he always considered the transfer of New Jersey to have been made in as ample a manner as received by him from the King; and he has moreover exhibited the opinions of Sir William Jones and other eminent lawyers that *nothing* had ever been retained by the Duke excepting the nominal rent.

V. It was asserted that Staten Island was adjudged to New York in 1669, but no clue can be furnished to the person, court, or authority by

which it was so adjudged. He has shown that, while there is no doubt of such a report having been sent over from England by Governor Nicolls, it was still an unsettled question in 1679; and, as such, undoubtedly one of those intended to be covered by the provisions of the subsequent grants. If it were not included, but on the contrary intended to be reserved, that fact would undoubtedly have been indicated by a change of description in the grants.

VI. It was asserted that "all well informed persons" considered the waters west of Staten Island as part of Hudson River, although no evidence of any system of nomenclature, in conformity with such an opinion having been in practice, has been presented. He has shown that specific titles, having no reference to Hudson River, have uniformly been conferred upon those waters in documents and maps from the earliest times to the present.

VII. It was asserted that the grantees of New York held the province by only a qualified title: He has shown that Charles II considered them as "absolute Proprietors and Governors"—subject, of course, to the right of appeal to the Crown, and that so far as their *rights* as "proprietors" are concerned they have time and again been confirmed, while the authority they possessed as "governors" never, certainly, reverted to New York, but is now legitimately vested in the State government of New Jersey.

VIII. It was asserted that an order of the Board

of Trade in November, 1697, rendered New Jersey "*thenceforth on all matters of commerce, in fact as well as in law, entirely subordinate to New York.*" He has shown that every attempt on to the part of New York to subject the commerce of New Jersey to its caprices most signally failed. And if any other points brought forward have not been touched upon it has been owing to their irrelevancy or to the fact that they carried their refutation so plainly with them as to render their discussion unnecessary.

In conclusion the writer would remark, that he is pleased to find the fairness and sound ideas of the Commissioners of New Jersey of 1769 recognized, even at this late day. It is to be regretted that their views were not indorsed at that time as they now are by THE GAZETTE'S correspondent. Meeting with his approval, as they seem to do, his attention is solicited to the following sentences which are also extracted from their "Brief:" "Where a deed will admit of two constructions, the one definite and certain, the other vague and uncertain, that which is certain should be taken and the other rejected." Nothing could be more "definite and certain," for the eastern boundary of New Jersey, than the direct line formed by the "Main Sea and Hudson's River;" nothing more "vague and uncertain" than the circuitous, undefined line, the adoption of which is essential to the substantiation of the claims of New York to Staten Island and the waters in question.

It is to be hoped, as the gentleman exonerates Mr. COCHRANE from any intention, by his paper "to distract the peaceful relations of the two States, as they were settled by the inter-State Treaty of 1834," and disclaims any such intention on his own part, that the sincerity of his protestations may be evinced by a cessation of the attacks upon New Jersey, New Jersey institutions, and New Jersey writers.

W. A. W.

Newark, New Jersey, December, 1865.

* * CORRECTION.—On page 168, in the document from Charles L., the sentence—"Terms and Conditions as *he* shall see fit,"—was printed, "Terms and Conditions as *we* shall think fit;"—a very different thing, and especially important to be noticed.

VII.

A BRIEF EXAMINATION

OF

MR. WHITEHEAD'S REJOINDER,

BY

MR. HENRY B. DAWSON.

MR. DAWSON'S EXAMINATION OF MR. WHITEHEAD'S LAST PAPER.

The readers of THE GAZETTE will bear testimony that the subject of the eastern boundary of East-Jersey has been discussed with the utmost freedom, in its columns ; and the greater number of them, having read the arguments of the learned Attorney-general of New York and of Hon. J. ROMEYN BRODHEAD, her distinguished historiographer, as well as the more extended examination of the subject by " H. B. D." and WILLIAM A. WHITEHEAD, Esq., will, probably, be prepared to decide the question at issue, without further instruction.

The subject, however, is an important one, both as a question of history and a question of State right. It has been before the world during nearly two centuries ; and it has commanded the attention and the pens of the ablest scholars, and the anxious consideration of the most distinguished statesmen, both in Europe and America. Humble farmers on the borders of Orange County and equally humble fishermen on the Hudson, Common Councils, Sheriffs, and Judges, gubernatorial representatives of Lords Proprietors and of Kings—even the King himself, in

the midst of his Privy Council—have been actively and anxiously engaged, at various times, in the same discussion as that in which THE GAZETTE is now employed; and it is a notable fact, that in the renewal of the time-honored dispute, through these columns, the weekly issues of the village newspaper which contains the arguments of the several disputants, are anxiously looked for on more than one side of Hudson's river, by many of the most enlightened scholars and distinguished and influential statesmen and jurists which our country possesses.

It is no common question, therefore; and it is not to be disposed of as are the minor questions of the day, which arise and disappear like the mists of the morning; nor is it one which can be properly met and disposed of, with nothing more than ridicule, sarcasm, and stale wit—its age and importance, at least, to say nothing of the respect which is due to those who are witnessing the struggle, should protect it from so grave and uncalled-for an impropriety.

It is a question of *legal right to property*, A QUESTION OF TITLE TO PREMISES; and the issue depends less on the rhetoric than on the evidence which shall be adduced. It is not the most eloquent nor the most facetious advocate; it is not the greatest wit nor he who can most successfully mystify his subject and misrepresent his opponent, who will render the most effective service in such a discussion, before such an

audience ; and that cause is either very weak or very unfortunate, whose advocate fails to distinguish a witty repartee at the expense of the truth, from a reliable authority with which to illustrate and sustain it.

The columns of THE GAZETTE have conveyed to its readers, during the past four weeks, a *Rejoinder* from the pen of him who is the learned Corresponding Secretary of THE NEW JERSEY HISTORICAL SOCIETY, to the *Review of the Questions under Discussion*, by "H. B. D.," which preceded it ; and those who have read that *Rejoinder* need not be told how little there is in it, beyond its misrepresentations, which requires any notice whatever, unless from those of whose cause its Author has assumed to be the advocate and champion.

Those whose pretensions were thus indecorously urged by Mr. Whitehead, will know what disposition to make of his feeble, if not pointless, *Rejoinder* : from those whom he has insulted by his unblushing misrepresentations, a sense of what is due to a subject of such grave importance will prompt, merely a few words in defense of the Truth of that History of which Mr. Whitehead professes to be a devoted admirer, of that History which he has not hesitated to prostitute, for the accomplishment of his unhallowed purposes. The object of this paper is to answer, *very briefly and very plainly*, that demand.

The misrepresentations by Mr. Whitehead, to which reference has been made, relate alike to

actions and to things ; and each of these great classes is fairly divisible into several minor divisions. Thus, he misrepresents his own action and that of the New Jersey Historical Society, as recklessly as he misrepresents those of the Duke of York and Sir George Carteret ; and the action of the twenty-four Proprietors of East-Jersey and of New York, of Montanus and Ogilby, of General Cochrane and " H. B. D.," alternately falls under the weight of his defamatory sentences. He recklessly misrepresents a feudal Lease as a conveyance in fee simple ; and he slurs over a subsequent Re-lease of *the same premises by the same Lord Proprietor of the estate*, on the lapse of the tenement, as if it, also, was an original conveyance, *in fee simple*, without regarding as worthy of his notice, the previous conveyances of the same premises, over and over again, in similar terms, by the same Lord Proprietor, to other patties. Ancient maps and public records are mutilated and then employed as evidence, although the former, *in their perfect form*, are depreciated as worthless ; and the testimony of those who were contemporary with the execution of the original Lease on which the whole subject rests, as well as that afforded by the subsequent acts of the original parties to that Lease, is wholly disregarded and unnoticed. In short, Mr. Whitehead's *Rejoinder* is little better than a series of inventions, ingeniously fitted to the peculiar formation of a Jerseyman's ambition ; and as the *conformiteur* in the hands of the latter, re-

ardless alike of grace and ugliness, indicates the organs which are most prominent on the head of his customer, so this *Rejoinder* from the pen of Mr. Whitehead, indicates to every intelligent reader, how little integrity, either of purpose or in the employment of means to accomplish it, may be looked for among those who are the advocates of the lawless pretensions of New Jersey to the waters and lands in question.

Before noticing the great body of Mr. Whitehead's misrepresentations, however, it seems proper to protest against his unjust and unfaithful statement of the original proposition, by General Cochrane, on which this entire discussion has been based. The original was in these words, *and only in these*; "THE WATERS BETWEEN STATEN ISLAND AND NEW JERSEY, THE KILL VAN COL, THE SOUND, AND RARITAN BAY, OR BY WHATEVER OTHER BAPTISMAL NAMES THEY OR THEIR PARTS MAY HAVE BEEN, OR ARE NOW, DESIGNATED, TOGETHER WITH ALL THE WATERS WHICH LAVE STATEN ISLAND SHORES, WERE FROM THE PERIOD OF THEIR DISCOVERY, KNOWN AND ACCEPTED, AND SHOULD NOW BE PROPERLY CONSIDERED, THE WATERS OF HUDSON'S RIVER." Mr. Whitehead, has thus stated them, in the opening sentences of his *Rejoinder*: "This discussion originated in a positive announcement by Attorney General Cochrane that 'the waters of the Hudson, in their seaward current, debouch through both the Narrows and the Kills': that 'the Hudson River empties itself through its two

“ ‘mouths, the Narrows and the Kills, into the Bay
 “ ‘of New York’ : and ‘that all the waters which
 “ ‘lave Staten Island shores, were, from the peri-
 “ ‘od of their discovery, known and accepted,
 “ ‘and should properly now be considered, the
 “ ‘waters of Hudson’s river.’ ”

It will be evident to the most casual reader, that important interpolations and omissions have been made by Mr. Whitehead, in this statement of the “positive announcement by Attorney General Cochrane,” in which “this discussion originated,” and in which HE SAYS, “The ‘Member of the New York Historical Society’ has come to the support of Mr. Cochrane;” and that reader must be as much of a Jerseyman as Mr. Whitehead himself, who will not acknowledge that those additions to and omissions form the terms of General Cochrane’s proposition, an unwarrantable and uncalled-for mutilation of the record of this discussion.

GENERAL COCHRANE MADE NO SUCH “POSITIVE ANNOUNCEMENT” AS MR. WHITEHEAD HAS PRESENTED IN HIS *Rejoinder*; AND “H. B. D.” “SUPPORTED” NO SUCH PROPOSITION—indeed, *the latter*, much to Mr. Whitehead’s subsequent amusement, *expressly denied the truth of the theory embraced in what is thus improperly stated as the first and second parts of the General’s “positive announcement;”* and it is not very clear, therefore, how he could have “supported” any one in maintaining that the Hudson empties through two mouths, while, at the same time, he united

with Mr. Whitehead in the statement that, *in fact*, that river had no more than *one*.

Such a misrepresentation of the question proposed by General Cochrane and of the action thereon of "H. B. D.," affords a sorry introduction to a plea for trumped-up "rights of New Jersey," on any subject; although it is in evidence, that New Jersey's advocates, in the matter now under discussion, have not failed, in former days, to resort to this shelter, when other means which they had employed had failed to accomplish their purposes.

Thus openly branded as a falsification of the record in this case, this portion of Mr. Whitehead's *Rejoinder* is exposed to the contempt to which it is justly entitled.

Concerning the misrepresentations by Mr. Whitehead, in the body of his *Rejoinder*, to which reference has been made, a few words are considered necessary.

I. THAT RELATING TO HIS OWN *May of the settled portions of East-Jersey, about the year 1682, AND TO HIS STATEMENT OF THE ACT OF MARCH, 1682-3 "TO DIVIDE THE PROVINCE INTO FOUR COUNTIES."*

It will be remembered that the Assembly of East Jersey, in March, 1682-3, passed an *Act for dividing the Province into four Counties*; that in its designation of the boundaries of Bergen County, in the first paragraph of that Act, the Assembly recognized the waters of the Kill van Col, *from one extremity to the other*, as "*Hudson's*

"River;" and that Mr. Whitehead, in his *East Jersey under the Proprietary Government*, carefully suppressed so much of the Act as would have communicated that very unpleasant fact to his less intelligent readers.

In his *Review of the Questions under Discussion* "H. B. D." called the attention of the public to this improper suppression of the truth, in what professed to be a purely *historical* volume; and a *Map of the settled portions of East Jersey, about the year 1682*, DRAWN BY MR. WHITEHEAD FOR THE ILLUSTRATION OF THAT VOLUME, was appealed to, in connection with the Act in question, to prove the truth of the charge.

An accusation of so grave a character, so clearly stated and so fully sustained by competent testimony, was received by the distinguished historiographer of East Jersey, with evident uneasiness; he even considered that an allusion to the subject was an evidence of the "bad taste" of his accuser; and that his character as a historical writer should not have been subjected, under the circumstances, to so unexpected an indignity. With commendable spirit, therefore, he resented the insult, as best he could; and as the charge rested only on the evidence, so far afforded by his own Map, that "*about the year 1682,*" Constables Hook was WHERE BERGEN POINT NOW IS—at the entrance to the Achter Col or Newark Bay—he boldly attempted to frown down the charge, by denying the correctness of that Map, on that subject; by casting upon the

unlucky engraver who had followed too closely the drawing of "W. A. W.," its author, the blame of inserting the words "Constables Hook," on the unlucky spot where "H. B. D." had found them, instead of placing them at the opposite or *eastern* extremity of the Kill van Col, where that Hook *now is*; and by quite as boldly challenging his accuser to produce a single Map on which Constables Hook is not shown to have been where it *now is*—on the Harbor of New York, at the *eastern* entrance to the Kill van Col. With a flourish of words, meaning nothing, Mr. Whitehead then dismissed the subject; and evidently threw himself back in his easy chair, perfectly satisfied that the charge had been disproved by his own, unsupported word.

It is not the particular purpose of this paper, to defend Mr. Whitehead's *Map of the settled portions of East-Jersey, about the year 1682*, against the graceless attack of its distinguished author. It does not appear proper, however, that such a deliberate attempt as this is, to mutilate the testimony afforded by the ancient records of East-Jersey, in order to sustain a trumped-up claim to the waters in question, should be allowed to pass unexposed; and the reputations of those who have been thus guilty of tampering with the evidence, in order to promote such a claim, must necessarily abide the legitimate consequences of such an exposure.

By reference to page 139 of a volume written by George Scot, and published in Edinburgh, in

1685, entitled *The Model of the Government Of the Province of East-New-Jersey in America*, the reader will find these words: "To goe back to "the South part of *Berghen neck* that is opposite to "*Staten Island*, where is but a narrow passage "of water, which ebbs and flows between the "said Island and *Berghen Point*, CALLED Constables Hook."

To confirm this statement, made by Mr. Scot, and to show the reader how reckless Mr. Whitehead has been, while engaged in his work of mutilation and misrepresentation, reference is made, also, to page 160 of *The History of the Colony of Nova Cæsarie, or New Jersey, to the year 1721*, by Samuel Smith—a volume which was printed at "Burlington, in New-Jersey," in 1765, and is known to every student of American history, as most authoritative on the subjects on which it treats. The reader will find there, under the date of 1682, these words: "*There was a considerable settlement on Bergen Point, THEN CALLED CONSTABLE HOOK, and first improved by Edsall, in Nicolls's time;*" and in Gordon's very useful *Gazetteer of the State of New Jersey*, Edit. Trenton, 1831, page 101, the statement is repeated.

The reader will thus perceive that Constables Hook, IN AND "ABOUT THE YEAR 1682," was not on the Harbor of New York, as Mr. Whitehead pretends in his *Rejoinder*, but at the entrance to the Achter Col, or Newark Bay; that, the Map of the settled portions of East-Jersey, about the year 1682,

by W. A. W., WAS AND IS, THEREFORE, PERFECTLY CORRECT IN THUS DESCRIBING IT ; that in March, 1682-3, when the Assembly of East-Jersey passed the *Act for dividing the Province into four Counties*, its recognition of the waters which separated Staten Island from the main, seaward, *as far as what was THEN known as Constables Hook*, as "Hudsons-river," it virtually conceded all that New York has ever demanded ; and that Mr. Whitehead's grave denial of these well-sustained facts and the impeachment of his own Map, are not sustained, either by contemporary Maps or contemporary statements.

As Mr. Whitehead has reproduced Mr. Scot's little volume in the Appendix of his *East Jersey under the Proprietary Governments*, he cannot have been ignorant of the exact locality of Constable's Hook, *as it was in 1685 : the Map of the settled portions of East Jersey, about the year 1682*, DRAWN BY HIMSELF AND INSERTED IN THE SAME VOLUME, indicates his full knowledge of its exact position, *three years earlier* : no further evidence is required, therefore, to prove his knowledge of its exact position when the Assembly passed the act of March 1, 1682-3, to which reference has been so often made.

Thus driven from pillar to post, in his luckless efforts to misrepresent the truth ; confronted by the most ancient and most authoritative historians of his own State, in each of his vain attempts to mutilate her records for illegal and unholy purposes, the distinguished author of

the *Rejoinder*, New Jersey's favored champion, stands convicted of the two-fold authorial misdemeanor of wilfully suppressing the truth, in a purely historical volume, and of a subsequent attempt to conceal his former mis-deed, then first brought to light, by making averments which he knew to have been unwarranted by the facts, and by a reckless impeachment of testimony, *given by himself*, which he knew was perfectly and entirely true.

With these evidences of his *suppressio veri* and his *suggestio falsi* before them, who shall say that this last advocate of New Jersey's pretensions is not the best? who shall say that of all her champions, from 1681-2 until to-day, Mr. Whitehead has not most successfully proved his entire fitness for a task in which there is so little that is honorable, so little that is entitled to the respect of any honest man?

II. THAT RELATING TO THE MUTILATION, BY THE NEW JERSEY HISTORICAL SOCIETY, OF ADRIEN VAN DER DONCK'S MAP, IN ORDER TO CONCEAL THE MOUTH OF HUDSON'S RIVER, AS DESCRIBED THEREON.

It will be remembered that "H. B. D.," in his *Review of the Questions under discussion*, invited the attention of his readers to a mutilation, by The New Jersey Historical Society, of Adrien van der Donck's *Map of New Netherland*, by suppressing from the copy of a section of it, which that learned body had inserted in the first volume of its *Collections*, the evidence that that reliable

Dutch topographer considered *the mouth of the Hudson's river to have been at Sandy-hook.*

In his *Rejoinder*, it will be remembered, also, Mr. Whitehead assumed an air of indignart contempt for what he was pleased to call "an unwarrantable accusation" of the Society—he even attempted to frown down as entirely groundless, the charge against that learned body, of mutilating the Map "for sinister purposes"—but, notwithstanding all this, he saw fit, also, to offer excuses for the suppression, in the Society's pretended copy of the van der Donck Map, of the crushing evidence which the original contains, of his own and the Society's reckless disregard of all the rights of historic truth.

The author of the *Review* was not insensible of the probable author of the fraud referred to, when he alluded to it in that paper—indeed, since the author of the volume which it illustrates, was also a member of the Committee under whose supervision that volume was printed, there could have been little doubt on the subject—but he followed the good old rule that the principal is accountable for the acts of his servants, particularly after those acts have been approved and confirmed; and he accordingly disregarded Mr. Whitehead and the Society's "Committee on Publication," and fastened the wrongdoing on the Society itself, for whom the former acted, and by whom their acts were subsequently approved and ratified. If a wrong has been done, *THE SOCIETY is the wrong-doer, before*

the world; and the Society must seek redress, if it desires it, from those of its servants by whom its confidence has been betrayed and by whom it has been led into its present unenviable position. With these, acting under the Society's authority and carrying away with them the Society's approval, the world has nothing to do.

It is amusing, however, to those who know who was the working man of the Society's "Committee on Publication," when this Map was mutilated and inserted in the volume which contains, also, the mutilated description of Bergen county, as defined in the Act of March, 1682-3, to witness Mr. Whitehead's effrontery in this part of the discussion. Just as if HE was not the man who had mutilated the Map and covered his associates with shame, he steps forward as the Society's defender; and he talks as glibly of "unwarrantable accusations," and frowns with as much an air of virtuous contempt for the accuser, as if HE was not the real author of all the mischief, the real mutilator of the Map as well as the Act, the unscrupulous champion of New Jersey, in her "unwarrantable" attempt to wrest from New York the control of her own waters.

But Mr. Whitehead says the Map referred to was "only one-third of the original;" as if ALL that belongs to that "one-third" should not have been copied; or, as if the fact that it was only "one-third of the original" afforded a warrant for mutilating it, "for sinister purposes."

He says, also, that the Map in question was de-

signed to be "brought within the limits of an "octavo page, four inches by seven ;" as if there was a law, limiting the size of Maps, confining them to the "limits of an octavo page," and prohibiting the use of *folding sheets*, when the subjects are too large for an "octavo page, four "inches by seven."

He says, also, "there was no room for them," [*the names of the Hudson river, off Sandy-hook,*] "if the character of the Map as a *fac-simile* (AS "FAR AS IT WENT) were preserved ;" as if the scale on which the Map was drawn could not have been reduced, or, what is frequently done in such cases, the ample margin which surrounds the Map could not have been encroached upon, by the insertion of a portion of the omitted names, outside of the limits of the specified "four inches by "seven."

The truth is, the Map in question was a well-planned attempt on the part of the Society's Committee and the Society itself, to impose upon the public, *as van der Donck's*, WHAT WAS NOT VAN DER DONCK'S ; and in that way they sought to conceal the evidence which van der Donck had afforded in his Map, *that the mouth of the Hudson's river was THEN [1656] considered to be at Sandy-hook.*

The character of van der Donck, a man of learning and a resident of New Netherland, was such that the testimony, on this subject, which his Map afforded, was of the greatest importance ; but, like some other testimony on the same subject which Mr. Whitehead has more recently en-

countered, it was found to be "exceedingly objectionable to Jerseymen." Like the "objectionable" part of the description of Bergen County, in the *Act for dividing the Province into four Counties*, passed in 1682-3, therefore, IT WAS PROMPTLY SUPPRESSED, in the volume issued by the Society; and, as in the case of the *Act* referred to, the readers of that volume, through the manipulations of *The New Jersey Historical Society and its servants*, have remained wholly ignorant of what van der Donck said, on one of the most important questions in which New Jersey has ever been interested.

The readers of THE GAZETTE can ascertain from these facts, whether or not the charge made by "H. B. D." against the Society, was an "unwarrantable accusation;" and they can judge therefrom, also, how modest a man Mr. Whitehead is, in thus boldly attempting to frown down, as indecent, the evidence of *his* and the Society's attempt to palm on the public as genuine, A MUTILATED COPY of van der Donck's Map of 1656.

III. THE MISREPRESENTATIONS OF MR. OGILBY AND OF THE PART WHICH HIS MAP AND DESCRIPTION OF THE PREMISES HAD TO DO WITH THE GRANTS BY THE KING AND DUKE OF YORK.

It will be remembered that "H. B. D." referred to the fact, that during more than twenty-five years before, and the same period after, the Grant of New Netherland to the Duke of York by the King, his brother, the term "Hudson's

"River" was generally applied to all the waters which surrounded Staten Island, as well as to those which are now known to us as "the Lower Bay;" that the mouth of "Hudson's River" was thus considered to be at Sandy-hook; and that the testimony of the most intelligent men, Dutch and English, civilians and office-holders, in Europe as well as in America, was adduced to support the novel, but unanswerable, proposition.

It will be remembered, also, that among these evidences of what, in 1674, was considered as "Hudson's river," the testimony of John Ogilby, the King's Cosmographer and Geographic Printer, was introduced; and it was reasonably inferred that both the King and the Duke, as well as the Grantees of the latter, were principally guided by his Map and by the statement made in his volume, in their belief that the Hudson had "two wide Mouths," the most Southern of which was called Port May, or Godyn's Bay; that "in the middle thereof was an Island called 'The States Island;'" and that its waters flowed into "the main Sea," only at Sandy-hook.

To the great mass of testimony with which "H. B. D." strengthened his argument, as well as to the argument itself and its conclusions, *Mr. Whitehead offered no reply—he had no reply to make*, SINCE HE FOUND NO ONE ON WHOSE TESTIMONY HE COULD HANG A SINGLE ADVERSE PLEA. Mr. Ogilby, however, was unwittingly singled out by him, as the particular object of his

denunciatory wit ; and that gentleman's volume, printed in 1671, was held up to the ridicule of those who knew less of its importance in this discussion, than Mr. Whitehead did. At the same time, the argument of "H. B. D.," that the official position of the King's Cosmographer which Mr. Ogilby then occupied, and his consequent influence in forming the opinions of both the King and the Duke, on what was "the main Sea" and what "Hudson's River," added greatly to the importance of the work and the statements which it contains, was openly ridiculed ; and it was flippantly asserted, among other reckless averments, that "there is not a particle of "evidence that they" [*Montanus and Ogilby*] "had ever heard of either passage," which are known to us as "the Narrows" and "the Kills."

The readers of THE GAZETTE need not be troubled with any defence, from our pen, of Mr. Ogilby, or of his Map or narrative ; nor is it necessary to defend the argument of "H. B. D.," that Mr. Ogilby's Map was probably that on which the King and the Duke had principally relied, when the Letters Patents were issued by the former, in June, and the Lease and Release by the latter, in July, 1674.

Appeal need only be taken, in this, from Cæsar, drunk, to Cæsar, sober ; and the reader is referred to a paper, entitled, *Northern Boundary Line: The circumstances leading to the establishment, in 1769, of the Northern Boundary Line between New York and New Jersey*, by WILLIAM A.

WHITEHEAD, which is printed in the *Proceedings of The New Jersey Historical Society*, viii, 157-186.

On page 161, the reader will find the following, from Mr. WHITEHEAD's pen :

"At the date of the Duke of York's grant to Berkeley and Carteret, there were but few maps professing to give the position of places, or the physical geography of the interior; and they all seemed to be more or less copies of one by Nicholas Joannis Vischero, which is thought to have been published in 1654. One, by Vanderdonck, published in 1656, which is unquestionably copied after Vischero's, may be seen in *The New York Historical Society's Collections*, Vol. 1st., New Series, and also, as FAR AS IT REFERS TO NEW JERSEY, in the first volume of our own *Collections*;* and one or both doubtless formed the basis of the Map to be found in the works of Montanus and Ogilby, published in 1671; and AS OGILBY IS STYLED 'Cosmographer and Geographical Printer to his Majesty,' THE MAP THAT HE SELECTED TO ILLUSTRATE THIS PART OF THE CONTINENT, MAY REASONABLY BE CONSIDERED THE ONE MOST LIKELY TO BE CONSULTED BY THOSE CONCERNED IN THE GRANT OF NEW JERSEY."

For the present, Mr. Whitehead is left with himself. He need not be subjected to any severer punishment than the shame which attends his conviction on his own testimony.

* How mute Mr. Whitehead was, concerning the mutilation of van der Donck's Map, in *The New Jersey Historical Society's Collections*; and how willing to place it, in its mutilated form, beside the un mutilated copy in *The New York Historical Society's* volume. Who shall say that New Jersey is not favored with an appropriate historiographer? H. B. D.

IV. THAT RELATIVE TO THE PORT OF PERTH-AMBOY.

It will be remembered that "H. B. D." asserted and showed, in his *Review*, that the efforts of the Proprietors of East-Jersey to secure a Port at Perth-Amboy which would be independent of New York, were unsuccessful; and that East-Jersey, in that respect, remained subordinate to New York, during the whole period of the Proprietary administration.

Mr. Whitehead, in his *Rejoinder*, devoted some two or three columns to show that *the opposite was the truth*:—that, in his own words, "IN EVERY CASE in which the right of East-Jersey to a sea-port was endeavored to be wrenched from her, THAT RIGHT WAS ESTABLISHED."

To "wrench" anything "from" another, presupposes the possession of the thing taken, by the person from whom it is "wrenched"—a state of affairs, concerning a seaport in East-Jersey, which is as void of truth as some others of Mr. Whitehead's statements; but, it is a sufficient reply to this averment, to say that as lately as April 14, 1689, the Proprietors thus Instructed their Governor, Jeremiah Basse:

"IV. You are to use your endeavour to oblige
 "the General Assembly to raise A GRATEFUL SUM
 "OF MONEY, to be remitted to London, towards
 "some ease of the great Charge these Proprietors
 "have paid, and the great trouble and expence of
 "Time, which they have been at in struggling many
 "Years for the Freedom of the Port of Perth-

"Amboy, for Navigation and Trade, WHICH IS NOW OBTAINED AT LAST, Free from the Encroachments and Pretensions of any Neighboring Colony, the Benefits and Advantages whereof will chiefly redound to the Inhabitants of the said Province." (*From the Orders and Instructions to Jeremiah Basse, Esquire, Governor, etc., London, 14th April, 1698—Leaming and Spicer, 220, 221.*)

As this curious "Order" was issued nearly eighteen years *after* Sir William Jones is said to have accomplished the wonders which Mr. Whitehead has announced, nearly eleven years *after* the wonderful quietus was administered to Governor Dongan, and some months *after* James had abdicated the throne, it is not very evident where Mr. Whitehead found a fact on which to hang his inventions, so often and so boldly advanced, that James was *always* anxious to secure to East-Jersey this coveted privilege; that "IN EVERY CASE in which the right of East-Jersey to a sea-port" was denied, from the days of Andross, in 1680, until the close of the Proprietary Government, in 1702, "THAT RIGHT WAS ESTABLISHED."

But the subject did not end here. Although the Proprietors appear to have supposed, or pretended to have supposed, in April, 1698, that "the Freedom of the Port of Perth-Amboy, for Navigation and Trade, is NOW OBTAINED AT LAST," after years of toil and at an enormous cost, it is quite apparent that the Government of

Great Britain did not so understand it—an important fact, which the Proprietors of East-Jersey soon after discovered.

Accordingly, in July, 1699, in their *Memorial to the Lords of Trade*, “the Proprietors of the “Province of East New Jersey, in America,” prayed “that upon the Annexation of the Government of the said Province to that of *New-York*, the Port of *Perth-Amboy*, may be established for entering Ships and Importing Goods “there, and Exporting Goods from thence, *without being obliged to enter their Ships at any “other Place*,” a petition which they certainly need not have presented if, as Mr. Whitehead pretends, Perth-Amboy already possessed that, much-coveted franchise.—(*Memorial—Leaming and Spicer*, 589.)

In their reply, the Lords of Trade considered it “very improper for his Majesty to oblige himself to a Compliance with this article,” (*Opinion and Answer of the Lords of Trade—Leaming and Spicer*, 594,)—a sufficient indication, one would suppose, of the purpose of the Government on the subject.

On the fifteenth of January, 1699-1700, the Proprietors forwarded a special Memorial on this subject, with an offer, as a compromise, “to “pay the same Customs as are paid at *New-York* ;” if the Government would only relieve them from the obligation they were under “to “Enter their Ships at any other Place;”—(*Memorial*, etc., January 15, 1699-1700—*Leaming and*

Spicer, 597, 598,)—another evidence that Perth-Amboy enjoyed no such franchise, even in 1700, as that which Mr. Whitehead has invented ;—but *that Petition, also, was rejected by the Crown* ; and the matter was subsequently continued in “The humble Memorial of the Proprietors of “the “Provinces of East and West-Jersey in America,” dated the twelfth of August, 1701, (*Leomiag and Spicer*, 599,) wherein those Gentlemen expressed “their readiness and desire to surrender all Right “of Government, in humble hope and confidence “that” [*his Majesty’s*] “Justness and Goodness “would Incline him to grant the Proprietors all “reasonable Privileges”—a submission which was no more successful than those which had preceded it.

Having thus abandoned their application for a Port at Perth-Amboy, and thrown themselves on the “Justness and Goodness” of the Government, the Proprietors and the inhabitants of the Colony—those whose rights on this subject had been “established” for more than twenty years, if Mr. Whitehead speaks truly—soon learned that they possessed no rights, whatever, on the subject ; and that their hopes and their desires, were alike disregarded ; that the Government and its representatives cared as little for “Jersey men” or their particular interests, as the “Jersey men” of to-day care for the interests or the convenience of any other persons or communities. This is evident in the fact that neither in the *Surrender from the Proprietors of*

their pretended *Right of Government*, (*Leaming and Spicer*, 609-616,) nor in *The Queen's Acceptance of the Surrender*, (*Ibid.*, 617, 618,) nor in her *Instructions to Lord Cornbury*, as the first Royal Governor, (*Leaming and Spicer*, 619-646) was the solicited privilege granted, or even mentioned.

These recognitions, by the Proprietors themselves, even AFTER the celebrated trial of *Basse vs. The Earl of Bellomont*, effectually disprove Mr. Whitehead's labored argument to show that, from 1680 until the close of the Proprietary Government, the right of East-Jersey to a Port, independent of New York, "was established;" and if Mr. Whitehead will take the trouble to refer to a volume entitled, *Contributions to the early History of Perth Amboy and adjoining Country*, BY WILLIAM A. WHITEHEAD, pages 294-297, he will find a pretty full admission, BY HIMSELF, of the greater number of the unpleasant truths to which reference has here been made—indeed, he expressly states, (page 297,) that "in August, 1701" [only eight months before the Proprietors surrendered "their pretended Right of Government" of the Colony,] "they reiterated their demand," [for the freedom of the port of Perth-Amboy,] "and success attended their efforts, BUT NOT TO THE FULL EXTENT OF THEIR WISHES."

In view of the continued "demand" by the Proprietors for the privilege of a port, as lately as August, 1701, and of the partial success, only, which attended it, the reader will determine how much of the Proprietors' "right" had been "es-

"tablished," "IN EVERY case in which that right "was endeavored to be wrenched from East-Jersey," from 1680 until 1702 ; and how candidly and how truly Mr. Whitehead has presented the subject, in his discussion of it, in THE GAZETTE.

The columns of THE GAZETTE might be occupied with other extended exposures of Mr. Whitehead's treatment of the subject, in his *Rejoinder*; but a simple reference to some others of these improprieties will serve the purpose of this paper.

I. It is said by Mr. Whitehead, in his *Rejoinder*, that "H. B. D." "expended an immense amount of "labor," [in his *Review*] "in proving that Staten Island has always been in the possession and under the jurisdiction, of New York ;" as if an attempt to prove a *proprietary right* to a specified property is equivalent to an attempt to prove a *continued possession* of it.

The *Review* of "H. B. D." was certainly devoted, to some extent, to the discussion of the subject of the *ownership* of Staten Island and of the waters which surround it ; and some persons have been found who consider that that ownership was clearly shown, therein, to have been vested, where it still is, in New York. The "immense amount of labor" expended in proving the *possession* of Staten-island, however, is nowhere visible in that *Review*, except in two merely incidental allusions (*Mr. Maverick's letter to Mr. Bond*—*Gazette*, November 18, col. 2—and

Gov. Dongan's letter to the Earl of Perth—Gazette, December 2, col. 1—) unless reference is made to "H. B. D.'s" reply to that part of Mr. Whitehead's *Rejoinder*, which was based on the grant of land on Staten Island, to Captain Palmer, (*Gazette*, December 2, cols. 1,2,) *which reply occupies less than a column of THE GAZETTE.*

Mr. Whitehead's disposition to treat the subject with unfairness, is nowhere more apparent than in this instance; and his substitution of "possession" for "ownership," or its equivalent, betrays the bad spirit in which he has conducted his side of this discussion.

II. It is also said by Mr. Whitehead in his *Rejoinder*, that "it is a circumstance worthy of note that not a document is known to exist, signed by the Duke of York himself, which calls in question the right of the Proprietors of East-Jersey to the island," [Staten Island;] (*Gazette*, January 6, col. 2;) as if the burden of proof of ownership therein rested on the Duke, who indisputably held the King's Letters Patents, as well as the Indian Deed therefor, and the possession of the Island, instead of on the claimants who possessed neither Deed, nor possession, nor a decent pretense to ownership of a single acre of it.

It is a strange idea that the Duke ought to have formally "called in question, over his own signature, the right" [?] "of the Proprietors of East-Jersey to the island," in order to maintain his own right thereto; and it is not less surpris-

ing that the non-existence of any such "document" as this, can be considered for a moment even by Mr. Whitehead, as "worthy of note," or as affording any evidence, whatever, of the validity of the pretensions set up by "the Proprietors," or by their successors in effrontery, to the ownership of Staten Island or of any portion of it.

III. It is also said by Mr. Whitehead, in his *Rejoinder*, that the Duke "was ever ready to confirm his original grant of *all the lands west of Long Island and Manhattan Island*;" (*Gazette*, January 6, column 2;) as if the Duke had ever made such a grant. The language of the Duke's conveyance was, "all that Tract of Land adjacent to New-England, and lying and being to the Westward of Long-Island and Manhitas Island, and bounded on the East part by the main Sea and Part by Hudson's-River," etc., (*Grant to Sir George Carteret.—Leaming and Spicer*, 47.) a very different description of the premises conveyed, as any lawyer's clerk, if not any good-sized school boy, could have told Mr. Whitehead, had he asked for information.

IV. Mr. Whitehead's *Rejoinder* teems with its author's remarks on the assumed right of Sir George Carteret to "govern" the inhabitants of East-Jersey, and of the subsequent right to do the same, which the Twenty-four Proprietors assumed to possess, as the Grantees of Sir George's Executors.

That gentleman should know, because it was

determined by those who possessed the authority to decide such questions, that if the Duke had attempted to convey his right of Government, it would have been invalid, because it would have been illegal ;* and he should know, if he does not, that both the Duke and the King were subject, at all times, to the Established Law of the Land.

The illegality of the claim to Govern the inhabitants of East-Jersey was fully recognized by the Proprietors of the Province, when they surrendered to the Queen what they, themselves, styled their "Pretences to the said Powers of Government ;"† and in view of that admission,

* "Her Majesty hath been advised, that they" [*the Proprietors*] "have no Right, nor can legally execute "any of the said Powers," [*of Government*] "but that "it belongeth to her Majesty in Right of her Crown of "England to constitute Governors of the said Pro-
"vinces, and to give Directions for Governing of the
"Inhabitants thereof, as her Majesty shall think fit."
[*Surrender of their pretended Right, by the Proprie-
tors, April 15, 1702—Leaming and Spicer, 613.*]

† "AND WHEREAS the Estate, Interest, Right and
"Title of the said *James Duke of York*, in and to the
"Provinces of East-Jersey and West-Jersey, Part of
"the Premises by the said recited Letters granted, are
"by mean Conveyances and Assurances in the Law,
"come unto and vested in or claimed amongst others
"by Sir Thomas Lane, Paul Dominique," [and others]
"the present Proprietors thereof, and, *they have also*
"*claimed, by virtue of the said Letters Patents*
"AND MEAN CONVEYANCES, to exercise within the said
"Provinces for the governing the Inhabitants thereof,
"all the Powers and Authorities for Government grant-
"ed by the said Letters Patents to the said Duke and
"his Heirs and Assigns ; *but her Majesty hath been*
"*advised THAT THEY HAVE NO RIGHT NOR CAN LEGAL-
"LY EXECUTE ANY OF THE SAID POWERS, BUT THAT IT*
"*BELONGETH TO HER MAJESTY IN RIGHT OF HER*
"*CROWN OF ENGLAND TO CONSTITUTE GOVERNORS OF*

it does not become Mr. Whitehead, who knows much less on the subject than they did, to contradict them.

V. He bases his pretensions to the waters in question and to Staten Island on the Duke's Release to the Twenty-four Proprietors—"it is not necessary to go further back than the date of the deed to the Twenty-four Proprietors, in 1682. This was granted in accordance with the request of the Earl of Perth for the express purpose, as stated in the instrument itself, of 'better extinguishing all such claims and demands as his said Royal Highness or his Heirs might anywise have' to East Jersey;" (*Gazette*, January 6, column 3.) as if, *four years before*, the Trustees of the Carteret Estate had not "conveyed his 'Plantation, in New Jersey to Thomas 'Creamer and Thomas Pocock;'" concerning the deed for which Mr. Whitehead has said, "it is evident that it was considered as vesting in them the full title to the premises." (*Gazette*, January 6, column 4.)

"THE SAID PROVINCES, AND TO GIVE DIRECTIONS FOR GOVERNING OF THE INHABITANTS THEREOF, AS HER MAJESTY SHALL SEE FIT. And the said Proprietors being desirous to submit themselves to her Majesty, and willing to surrender ALL THEIR PRETENCES to the said Powers of Government, to the Intent her Majesty may be pleased to constitute a Governor or Governors of the same Provinces, with such Powers, Privileges and Authorities for the Government thereof, and making such Laws there with the consent of the Assembly of the said Provinces, and her Majesty's subsequent approbation thereof, as her Majesty in her great Wisdom shall think fit and convenient," etc. (*Articles of Surrender*, 15 April, 1702—*Learning and Spicer*, 612, 613.)

Viewing the general subject from Mr. Whitehead's stand-point, and estimating the character and value of "Deeds" by HIS standard, it is not very clear how *the Duke's* "Deed" for property, "the full title" to which had been already "vested" in Pocock and Creamer, four years before, was worth much; and it is not much more apparent, when viewed from the same stand-point, how much more value there was in franchises granted in that "Deed," which had been conveyed by the same Duke, in September, 1680, *nearly two years before*, to the younger Sir George Carteret.

VI. In his opening, in THE GAZETTE of December 23d, Mr. Whitehead attempted to discredit, *by inuendo*, "H. B. D's." dismissal from the case, as irrelevant, of the Letters Patents to the Duke, of the twelfth of March, 1664, and of the Duke's grant to Berkeley and Carteret, as joint tenants, of the twenty-fourth of June, 1664; yet, in the same paper, he admitted, concerning those instruments, "in reality, their existence or non-existence *has little to do with the merits of the case*;" and in THE GAZETTE of January 6th, he said, concerning the Deed of Sir George Carteret's property in the Colony to the twenty-four Proprietors, dated the second of February, 1682-3, "as has been already demonstrated, *it is not necessary to go further back than the date of the deed to the Twenty-four Proprietors, in 1682.*"

VII. He amused himself, and attempted to amuse his readers, with forced witticisms on the distinc-

tion made by "H. B. D.," between "physical" and "historical" facts, and their, sometimes, varied testimony ; (*Gazette*, December 23, col. 1, and January 9, col. 2,) as if a change of the local nomenclature, from any cause, necessarily carried with it a change of ownership of property thereabouts, and necessarily disturbed all the relations existing between landlords and tenants, in the newly named neighborhood.

It is a "historical" fact that the south-western point of Bergen-neck was, once on a time, called "Constables Hook;" and it is a "physical fact" that, to-day, "Constables Hook" is at its south-eastern extremity. Which of the two does Mr. Whitehead suppose would control a dispute concerning the title of property "on Constables Hook," in 1683,—the "historical" or the "physical"? Even in the making of maps, Mr. Whitehead has clearly preferred the "historical"; and it was only when that gentleman became the voluntary advocate of a bad cause, that he closed his eyes to the Truth and gave the preference to "the physical."

VIII. In his opening, in *THE GAZETTE* of December 23d, he said: "Every true historical enquirer should hesitate to attribute to an opponent *an intention* to suppress any fact or document essential to the full consideration of any subject, and the course of *THE GAZETTE's* correspondent in that respect will not, therefore, be followed," to which he added a copy of Sir William Jones's letter of 28th July, 1680.

If this means anything, it means that the author of the *Review* has "suppressed" either Sir William Jones's letter or some other "essential" "fact or document." As no reference was made to any other supposed case than Sir William's letter, it is a reasonable inference that no other "essential fact or document" than that, was thus considered as "suppressed;" and on that subject, by a reference to THE GAZETTE of December 16th, it will be seen that this letter *was not only referred to in the Review, but it was shown to contain an opinion which fully accorded with the argument of "H. B. D.,"* and as fully overturned the theory of an absolute conveyance, in fee simple, of the property—as we understand the term—which Mr. Whitehead so strangely and pertinaciously urged.

It is proper to remark, also, in this connection, that the "opinion" of Sir William Jones, about which Mr. Whitehead talked so glibly and so wildly, related altogether to the value of the evidence which had been produced to him, *concerning the right to collect an additional Five per cent.,* AND NOT TO THE QUESTION OF JURISDICTION OR RIGHT OF GOVERNMENT IN EAST-JERSEY, AS PRETENDED.

He simply said "I am not satisfied (by any-thing that I have yet heard) that ye Duke can legally demand that" [*the Five per cent claimed from the inhabitants of New Jersey*] "or any other duty 'from ye inhabitants of those lands;" (*N. Y. Colonial Documents*, iii, 285) and *on no other question than this of rent or pecuniary reservation,*

did that "opinion" treat—the words concerning "profit" and "Jurisdiction," which Mr. Whitehead used so freely, are portions of Sir William's description of a document which had been produced in evidence by the Proprietors, on the merits of which he passed no "opinion" whatever.

When Mr. Whitehead spoke, therefore, of "Sir William Jones's 'opinion,' that under the grants to Berkeley and Carteret there was 'noe reservation of any profit or soe much as of Jurisdiction ;'" (*Gazette*, January 6, column 3) he simply falsified the Record, by inventing an "opinion" for Sir William Jones, on a subject on which that gentleman had given no "opinion" whatever; and all the learned argument, based on that invention, in which Mr. Whitehead subsequently indulged, necessarily falls with it.

Mr. Whitehead's remarks concerning the duty of "every true historical enquirer" were very appropriate: how much more appropriate would they have appeared had they been sustained by his own example.

No more evidence will be required to establish the fact that Mr. Whitehead, both in his *Review of General Cochrane's Paper* and in his *Rejoinder* to "H. B. D.," has treated the subject under discussion, as well as those whom he has opposed, with great and continued unfairness and, sometimes, with positive wickedness; and the patience of the readers of THE GAZETTE, already severely taxed, need not be longer im-

posed upon by continuing the unpleasant exposure.

Having thus been brought to the close of our labors in this very important, if not generally interesting, discussion, we have the satisfaction of knowing that we have honestly and earnestly done our duty to both the great parties on the record, as well as to Justice and the Truth of History.

We have shown that the original seizure of New Netherland by the English, in 1664, was a violation of the law of England as well as of the Law of Nations, and therefore, *de jure*, invalid ; and despite his ridicule and pretensions, we have driven our opponent from his hold on a valueless title which originated in this illegal seizure, to a legal one, which originated in the Treaty of Peace, ten years later.

We have deprived the advocates of New Jersey's groundless pretensions, of the sophistries with which they had cunningly concealed, for nearly two centuries, the character and import of the Letters Patents of June 29th, 1674, and those of the Duke's Lease and Release to Sir George Carteret, of July 28th and 29th, of the same year ; and we have showed,

FIRSTLY, That instead of absolute conveyances of property, as freehold, in fee simple, as the term is understood in these days, as Mr. Whitehead and those whose echo he is, have vainly attempted to establish, the King actually conveyed New Netherland to the Duke only as a Manor

was conveyed, in those times, by the Lord Paramount to his tenant,* with certain reservations, *expressed*, of yearly rentals† and with certain other reservations, *impliedly*, but *necessarily*, retained, under the then existing law of the land.‡

We have showed, SECONDLY. that precisely the same character belonged to the conveyances which the Duke, as the Mesne Lord of the countries formerly known as New Netherland, made successively, to Sir George Carteret and his successors in interest ; § and that those conveyances

* "TO HAVE AND TO HOLD all and singular the said Lands and Premises, with their and every of their Appurtenances, hereby given and granted, or herein before mentioned to be given and granted unto our said dearest Brother JAMES Duke of York, his Heirs and Assigns for ever ; *to be holden of us, our Heirs and Successors, as of our Mannor of EAST GREENWICH, in our County of KENT, in free and common Socage, yielding and rendering.* etc. (*Letters Patents to the Duke. June 29, 1674—Leaming and Spicer, 42.*)

† "And the said JAMES Duke of York, for himself, his Heirs and Assigns, doth Covenant and Promise *to yield and render unto us our Heirs and Successors, of and for the same YEARLY AND EVERY YEAR, FORTY BEAVER SKINS, when they shall be demanded, or within Ninety Days after such demand made.*" (*Ibid.*)

‡ Blackstone's Commentaries, Book II, Chap. 5—Edit. Oxford, 1766, ii, 61—77.

§ "TO HAVE AND TO HOLD all and singular the said Tract of Land and Premises, with their and every of their Appurtenances, and every Part and Parcel thereof, unto the said Sir (GEORGE CARTERET, his Heirs and Assigns for ever : *yielding and paying therefore unto the said JAMES Duke of YORK, his Heirs and Assigns, for the Tract of Land and Premises, YEARLY, the sum of TWENTY NOBLES of lawful Money of ENGLAND, if the same shall be lawfully demanded at*

were not, as the advocates of New Jersey's pretences have generally assumed, conveyances of a freehold, in fee simple : that the Duke, as the Mesne Lord, and the Proprietor or Proprietors of East-Jersey, as the sub-tenant or sub-tenants, in their intercourse in this matter, were governed solely by the feudal law of tenures, as it was recognized in England, in 1674 ; and that the questions arising from that intercourse must be considered by us in the light of *that* system, not in that of the system which *now* prevails in the United States.

We have showed, THIRDLY, that in the interpretation of the several instruments of conveyance, whether that of the King to the Duke or

"or in the Inner Temple Hall, LONDON, at the Feast of St. MICHAEL the Arch Angel yearly." (*Release by the Duke to Sir George Carteret*, July 29, 1674—*Leaming and Spicer*, 48.)

"The present Proprietors who derive their respective Titles to their several Shares and Proportions of the Soil of those Provinces by SEVERAL MEAN CONVEYANCES from and under the before mentioned Grant to the Earl of Perth, and other Persons, to whom THE DUKE OF YORK HAD IMMEDIATELY CONVEYED THE SAME," etc. (*Report of the Board of Trade to the Lords Justices*, October 2, 1701—*Leaming and Spicer*, 604.)

* * "AND WHEREAS the Estate, Interest, Right, and Title of the said James Duke of York, in and to the Provinces of *East Jersey* and *West Jersey*, Part of the Premises by the said recited Letters granted, are by MEAN CONVEYANCES and Assurances in the Law, come unto and vested in or claimed amongst others by Sir Thomas Lane, Paul Dominique," [and others] "the present Proprietors thereof, and they also have claimed, by virtue of the said Letters Patents and MEAN CONVEYANCES, to exercise," etc. (*Articles of Surrender of their pretended Right of Government, by the Proprietors of New Jersey*, April 15, 1702—*Leaming and Spicer*, 612, 613.]

those, respectively, of the Duke to Sir George Carteret, Sir George Carteret the younger, and the Twenty-four Proprietors, the true "intent and meaning" of the parties thereto must control ; and that the meaning, to-day, of terms employed therein, wherein it conflicts with the former, must be peremptorily rejected ; and we have reconciled the apparent inconsistency in the description of the premises, in the Duke's conveyances, — that inconsistency which has baffled the ingenuity and learning of more than one Boundary Commission and led astray others beside Mr. Whitehead—by producing the most indisputable evidence, that for many years, both before and after the date of Sir George's Lease of East Jersey, the Hudson river was generally considered, both by the Dutch and the English, as flowing on *both* sides of Staten-Island, and emptying into "the main Sea," at Sandy-hook.

The establishment of these very important facts, by abundant and incontrovertible testimony, has removed all doubts which may have existed previously, concerning the exact meaning of the words which were employed by the Duke to describe the Eastern boundary of East Jersey; and, in the light of this testimony, no portion of that boundary now remains in obscurity. From Little-Egg Harbor, northward, to the mouth of "Hudson's river," *at the northernmost point of Sandy-hook*, "the main Sea" was made its limit; thence, "Hudson's river," whether locally known as "Godyn's Bay," or the "Kill van

"Col," or the North River, was named as its easternmost boundary ; and the waters of the Hudson, *as the Duke and Sir George mutually understood the term*, from "forty-one "Degrees of Latitude," southward to Sandyhook, whether on the east or the west side of Staten-island, remained, unconveyed, in the undisputed and legal possession of the Duke, as waters of his province of New York.

This reconciliation of modern terms with those which were employed by the Duke, in his description of the Eastern bounds of the premises conveyed to Sir George Carteret and accepted by the latter, also explains the reason that Staten-island was not considered a part of East Jersey, when, in 1682-3, the Assembly of that Province first divided its territory into Counties ; and, in the light of this testimony, it is no longer necessary to discuss the question, as was done by the Boundary Commissioners, in 1807,* whether or not the Kill van Col may be properly considered as "the main Sea!" At the same time, the much talked-of *forbearance* of New Jersey, in not taking possession of Staten-island, as a part of *her* territory, like other borrowed finery with which, from time to time, her injudicious advocates have bedecked her, fell to

* New Jersey Commissioners to New York Commissioners, Sept. 30, 1807, and reply of the latter, Oct. 2, 1807 ; the former to the latter, Oct. 3, 1807, and two replies of the latter, Oct. 5, 1807. See, also, Representation of the Commissioners of New Jersey to the Legislature, appended to the Governor's Message, Feb. 28, 1828, page 60.

the ground ; and she stood before the world, as she still stands, in all her naked deformity, as much an object of general contempt, save to the few who habitually minister to her abominations, as Suffolk's "Lean-faced Envy, in her loathsome Cave."

The unpleasant duty which devolved upon us, on the appearance of Mr. Whitehead's *Rejoinder*, having thus been briefly and imperfectly discharged, we confidently leave the entire subject in the hands of the learned gentleman who opened the discussion and with the Court to whose judgment it has been officially submitted.

H. B. D.

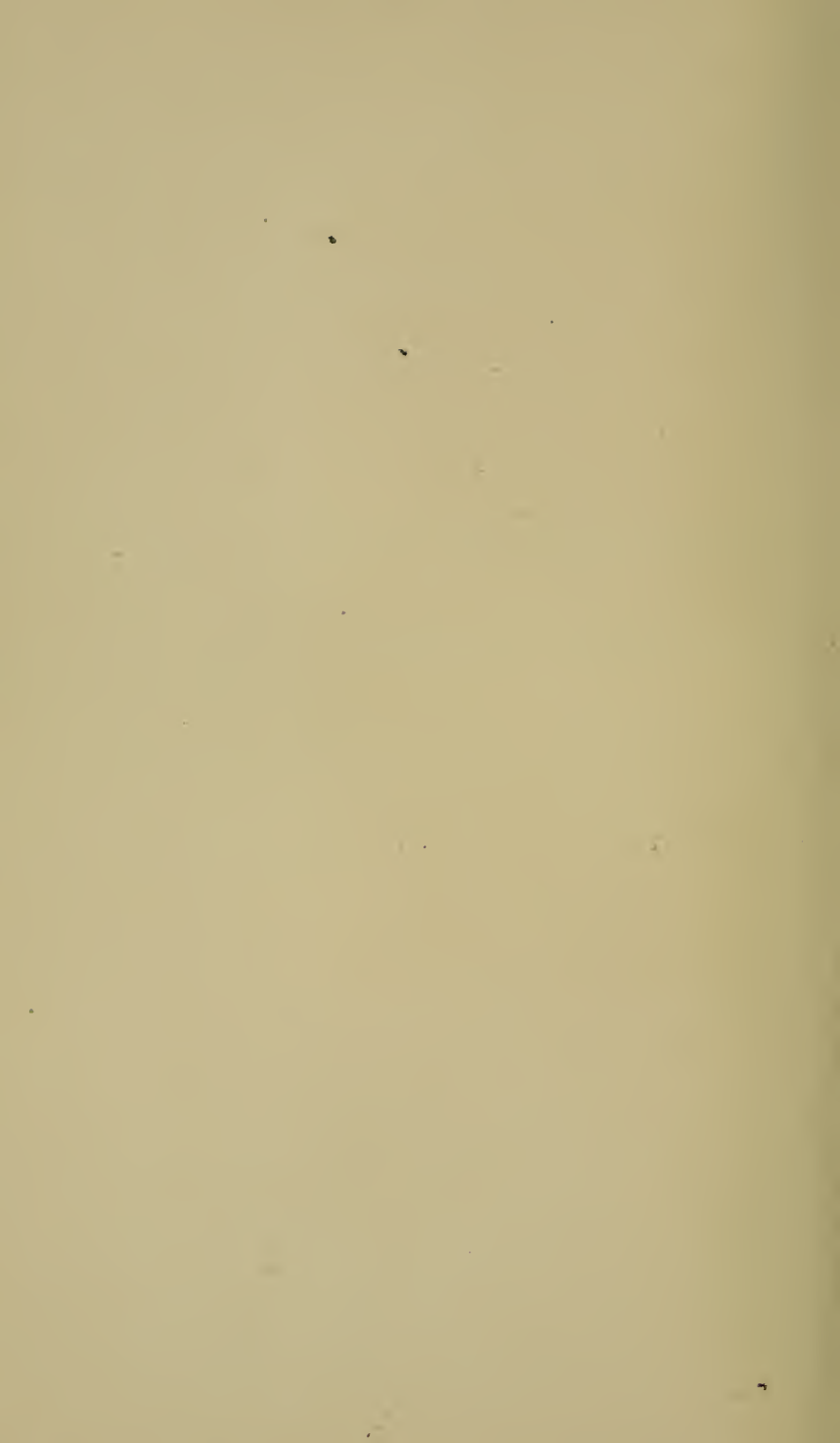
Morrisania, N. Y., January 20th, 1866.

VIII.

GENERAL COCHRANE'S LETTER

TO

THE EDITOR OF "THE GAZETTE."



GENERAL COCHRANE'S LETTER.

New York, March 12, 1866.

HENRY B. DAWSON, Esq. :

MY DEAR SIR: The conclusion of your rejoinder to Mr. Whitehead's criticisms on the New Jersey Boundary question, presents to me a fitting opportunity for brief comment. It, perhaps, has not been forgotten that the attention of this gentleman was first bestowed upon a paper which I had the honor of reading before the New York Historical Society, and from which the line of subsequent controversy proceeded. It was not my fortune to be within the State during the continuing publication of his strictures, nor at their termination. But, had I have been, I do not think that my judgment would have altered the determination of chance, and still there, probably, would have been no reply, by me, to Mr. Whitehead's answer. All will understand the reason; but, perhaps, those only familiar with the usages of forensic discussion will appreciate the method. Whenever, to an opening argument, an impotent answer is submitted, it is not customary to vex the judicial ear with "damnable iteration." I could not perceive that, at any point, my reasoning had either been invaded by facts or disturbed by argument.

Where there was nothing to reply to, therefore, silence, I thought, was obviously appropriate. The personal diatribes with which Mr. Whitehead encumbered the profuse track of his narrative, were probably intended, as the bully intends his forced grin for his backers—a sort of signal of confidence in his own muscle, and of speedy disaster to that of his opponent. I certainly could not object to this sardonic playfulness of the gentleman, albeit a little in detraction of the dignity which should invest the grave Historian of a State. I used charity, and pardoned, to the amiable weakness of the author, the vanity which mistook for argument, his unhappy efforts in the character of a *bel-esprit*. Yet, among these vagaries, I remember some, which, I am thinking, should be restrained, if not denounced.

The objector, something to be sure, in Ercles' vein, solemnly demands why the Attorney-General of New York should threaten New Jersey with a judicial disturbance of the treaty of 1834, between the two States? Had he sufficiently desisted from his fantastic gambols, to peruse the paper he was answering, the objector would not have failed to read: "As I think, she [*New York*] unwisely, in 1834, parted with "a moiety of her right of access to maratime "wealth. *The irrevocable past I would not seek "to reclaim*; but surely its lessons should engraft "in the future, vigilance, wisdom and resolution." But the error was not only essential to his con-

sistency ; it was required to inspire a loftier flight. Hear him : " Surely any attempt to disturb the amicable relations existing between the two States, by suggestions of the kind put forth by Mr. Cochrane, cannot but be considered as impolitic, unjust, and unwarranted by any circumstances of the time." And, who, Mr. Whitehead, has made this attempt to disturb those amicable relations, if not the State which you assay to champion ? Can the blear optics of this gentleman really have addressed the page he was controverting ? or else, what opacity of intellect, or malady of understanding, could have obscured or perverted these words, plainly impressed upon it : " Yet, the State of New Jersey, contending that the Main Sea flows only without Sandy Hook, ASSERTS, by an extension thereto of the central dividing line, a right to the southerly one-half of the Lower Bay of New York, inclusive of a substantive section of the ship channel to the harbour of New York." This assertion, couched in judicial process, reposes within the Federal Courts, encouraged and supported by New Jersey, the aggressor, and resisted by New York, simply, in self-defense. Yet, lumbered with ignorance, the objector, staggering, treads onward thus his blundering way : " The length of this review precludes any discussion of the terms of the agreement of 1833-4, fixing the boundaries as they now are. Although so inconsiderately denounced by Mr. Cochrane, they will be found

“on examination to have been framed
 “in a spirit of anxious solicitude to put an end
 “forever to the disputes between the two States,
 “the concessions being, for the most part, made
 “by New Jersey ; and it is hoped, that neither
 “by word nor deed, may the good understanding
 “then arrived at, be disturbed.”

“Framed in a spirit of anxious solicitude to
 “put an end forever to the disputes between the
 “two States”! Then, why does New Jersey, now,
 lay claim to the ship-channel of New York?

“The concessions being for the most part made
 “by New Jersey”! If so, why does New Jersey
 now, lay claim to the ship-channel of New
 York?

“And it is to be hoped that by neither
 “word nor deed, may the good understanding
 “then arrived at be disturbed”! Then why does
 New Jersey *now* lay claim to the ship-channel
 of New York?

Fie, Mr. Whitehead! Mendacity only could
 sustain in your ultimate paragraph, the man cog-
 nizant of the facts. But, let forbearance rule
 the doubt into a charitable belief, that you are
 as ignorant, as the exigencies of your reputation
 require you to be.

The author who aspires to the oracular rage,
 is presumed, at least, to have sought the inspira-
 tion of truth. But what reliance can he expect,
 whose premises are founded in ignorance, and
 whose conclusions are hecatombs of massacred
 facts. When Mr. Whitehead next ascends the

Tripod, it may be hoped that he will recall a few of the rudiments of authorship. May he remember that the system of dialectics, which disregards facts is apt to enshroud its disciples with confusion; while that which opposes them is stricken with the decay which infects falsehood. Above all, may he remember, whenever, hereafter, it shall be his fortune to sustain the encounter of propositions of great pith and moment, that the armor of controversy is constructed of argument, and that its weapon is truth; that neither will the one be strengthened by distempered invective, nor the other be sharpened by personal abuse.

And now, Mr. Dawson, it occurs to me that I may revert to the proposition from which this controversy arose. As originally submitted by me, it is: "THAT THE WATERS BETWEEN STATEN ISLAND AND NEW JERSEY, THE KILL VAN COL, THE SOUND, AND RARITAN BAY, OR BY WHATEVER OTHER BAPTISMAL NAMES THEY, OR THEIR PARTS. MAY HAVE BEEN, OR ARE NOW DESIGNATED, TOGETHER WITH ALL THE WATERS WHICH LAVE STATEN ISLAND SHORES, WERE, FROM THE PERIOD OF THEIR DISCOVERY, KNOWN AND ACCEPTED, AND SHOULD PROPERLY NOW BE CONSIDERED, THE WATERS OF HUDSON'S RIVER."

An easy dissection renders conspicuously plain that the predicate of "all the waters which lave Staten Island shores," is, that they "were, from the period of their discovery, known and accepted" as "the waters of Hudson's River;"

and that they should, therefore, "properly now" be so considered, it is equally plain, is the corollary, or inference claimed from that theorem. In simpler terms—the proposition may be thus stated: Because "all the waters which lave Staten Island shores were, from the period of their discovery, known and accepted as the waters of Hudson's River," therefore, "should they properly now be considered the waters of the Hudson River."

A series of historical proofs chronologically adduced to the support of the premise, that these waters were from their discovery, known as the waters of the Hudson River, enabled me, in the paper which I read, thus to conclude: "I may now, I trust, be permitted to think that the proposition submitted, that all the waters which surround Staten Island, are the waters of the Hudson, stands substantiated by abundant proof."

You will perceive, Mr. Dawson, that by no other process, than that of sinister inference, could the language be distorted, which so peremptorily restricts enquiry to the historical record, and so specifically limits the proof to the question of historical identity. Recall now, if you please, Mr Whitehead's dogmatic assertion, that "not a drop of the water of the Hudson, flows through the passage between Staten Island and the main;" and answer, if you know, among the canons of criticism, any that does not deride such an answer to the proposition,

that from their discovery, the waters of the Hudson were reputed to encircle Staten Island round about to the sea, or, that does not remit its author to the penalties, with which it is charged. If I remember, this remarkable answer is preceded by as remarkable a specimen of drowned metaphor. "A concourse of watery particles" "jostle" "detachments of watery hosts;" fluvial "columns of the Passaic and the Hackensack" intermingle with "hosts of the Hudson;" and battalions" and "flank movements," "rendezvous" and "scouting parties," figure alternately in the tides of the Col, as securely, as on a stricken field. Admirable as was the feat which plucked, dripping, these marine flowers of rhetoric, their martial vigor is not unnaturally suggestive of something like liquid inspirations; and the metaphor, however criticised, should not, therefore, be thought *mixed*, which so appropriately reels before an answer, visibly laboring with a drop too much.

But, by what proof, is it assumed that this "physical fact" is "established beyond controversy? Whose the authority, by which rivers run, and the ocean stream infects? None being conceded, either the question stands adjourned, or Mr. Whitehead's assertion is conclusively authentic. I had heard that Mr. Whitehead is a historian. You, Mr. Dawson, have recently exposed his licentious intimacy with maps. But, indeed, I had not heard that the learned gentleman, is also Hydrographer in ord-

inary, to the State of New Jersey. Yet, he speaks, as one with authority. But, let it pass, and allow me to suppose that the waters of the Hudson do not, in fact, diverge westward, through the Kills, in their passage to the ocean—can you perceive that the proposition, that the waters of the Kills, outward to the Sea, were, from their discovery, recorded in history and written on charts, the waters of Hudson's River, is at all affected by the supposition? As well might it be claimed, that because it is ascertained that the turbid waters of the Missouri invade and usurp the channel of the Mississippi, from the confluence of these rivers, therefore, the river whose mouths form the Delta, at the Gulf, was, never understood to be the Mississippi, but was always known as the Missouri. Notwithstanding, the material identity of the waters in the seaward channel below the rivers' junction, with those of the Missouri, not only has no doubt ever been entertained that they were designated and known as the waters of the Mississippi, but at this very day, the map would be scouted in the schools, which inscribed the river below St. Louis, with the name of the Missouri.

But, I have too long, my dear Mr. Dawson, been diverted from the purpose with which I addressed you. It is needless that I should express the interest with which I have perused the results of your historical explorations, or that I should convey to you the gratification experi-

enced by the consequent confirmation of my opinions. The proofs adduced by me, were in their number, of that character, which, in my judgment, located unalterably, an historical fact. Though aware, then, of others, and that further researches could not but accommodate my proposition, thus conclusively demonstrated, yet, I was pleased to commit to your superior means and opportunities, the labor of excavating the deposits of Colonial history, and of drawing from their recesses its dimmed documents. The fitting commentary on your ability, is the success which has crowned it. You have rescued from the obscurity of encroaching time, the authentic monuments of forgotten events: you have elicited from oblivion the perishing memorials of a vanishing age: you have exhumed the judicial decrees, and disclosed the Orders in Council which affect interests and guide opinions: you have prolonged to our generation, the remembrance of the learning and the rectitude of a former day. Where fallacy obtruded, you baffled it: where mutilation marred, you exposed it: where error usurped, you conquered it.

I may be permitted to hope that these fruits will not be misapplied. They are HISTORY, and they belong to TRUTH. No idle caprice marshalled the way to this exposition of facts. Its inception was in the defence of the interests of the State of New York, at the tribunal of a Federal Court, where they had been summoned, upon high question made by the State of New Jersey.

Whatever the individual asperities of controversy, precipitated by the depraved vigor of unprovoked personal assault, the attempt to engraft them upon two great States, not only is to be deprecated as injurious, but may be regarded as futile.

New York and New Jersey, when yet two hundred years have passed, as near two hundred years have gone, of mutual discord and contest, will survive, then, as now, prosperous, great and free—respected by all, respecting each other. Then, when the actors in this passing scene shall have expended their brief breath, and their life be summed with them that sleep, their petty passions and their joys, their little griefs and their hopes, will long have descended into the universal tomb: But, still mighty and powerful will continue New York and New Jersey—mother and daughter—enduring, and as durable as the waters which divide them.

I am, Very Truly, Yours,

JOHN COCHRANE.

IX.

A POSTSCRIPT,

BY

HENRY B. DAWSON.

35 1/2

POSTSCRIPT.

WITHIN the past week or two, THE NEW JERSEY HISTORICAL SOCIETY has published the second part of Volume X. of its *Proceedings*, embracing a record of its doings at its meetings, held on the 18th of May, 1865, and on the 18th of January, 1866—the only meetings of that body during the past fifteen months.

In the minutes of the last-mentioned meeting, as published in that official work (*page 72*), appears the following :—

“MR. WHITEHEAD stated that, since the last meeting of the Society, he had felt called upon, as its *Secretary*, to engage in the defence of the State, against the effect of unjust imputations and erroneous statements in relation to the water boundaries between it and New York, by replying to several published articles, circulated among prominent gentlemen of that State interested in historical subjects. The discussion had taken a wide range, and had excited some attention, from the evident desire, manifested in some quarters, to create dissatisfaction with the boundaries, as established by the inter-State treaty or agreement of 1833. He had placed

“a copy of the various articles in the Library, for the information and use of the members.

“Mr. W. RUTHERFORD moved that the papers written by Mr. WHITEHEAD on the subject be referred to the Committee on Publications, with a view to their being published in the *Proceedings of the Society*.

“Judge FIELD, from the chair, stated that he had read the articles with great interest, and considered them eminently worthy of preservation in the form proposed, embodying, as they did, a large amount of information on the topics involved. He made some interesting statements respecting the course of New York, in past years, in relation to the Boundary question, particularly in regard to the objections of that State to refer the matters of difference to the Supreme Court, a reference which, if now made, he was satisfied would result more favorably for New Jersey than had the commission of 1833.

“After some further remarks from Messrs. HAYES and ALFOSEN, Mr. RUTHERFORD’s motion was adopted.”

This publication adds new interest to the discussion; and, to some extent, at least, it changes the character of what was supposed to have been Mr. Whitehead’s papers.

Instead of William A. Whitehead, it seems that it was the New Jersey Historical Society who *Reviewed* General Cochrane’s paper and *Rejoined* to my *Review*; and it now appears that it was The New Jersey Historical Society, through its

official organ, instead of the gentleman who is the able executive officer of the New Jersey Railroads—so well known to the world and at Trenton—which removed ancient landmarks, mutilated ancient records, made its opponents say what they never uttered, and refused to consider, or even to recognize, the teachings of that History of which it inconsistently pretends to be the conservator and best friend.

Mr. Whitehead will receive, therefore, my most humble apology for all that I have said of *him* and of what I supposed to be *his* words and actions, in the conduct of this discussion; and I desire the shameless Secretary and the Society which, *as such Secretary*, he represented in opposition to Messrs. Cochrane and Brodhead and myself, to bear the burden of the shame which, it seems, belongs exclusively to them.

With this information before me, it no longer appears strange that The New Jersey Historical Society, in its corporate capacity, should enter this well-fought field; nor is the re-production of what was supposed to be Mr. Whitehead's papers, among the *Proceedings* of that Society, as strange as it seemed to be, before this tract fell into my hands. The Secretary reported his official action to the Society, as every agent should report to his principal, and the Society recognized the propriety of its Secretary's conduct, as measured by the Jersey standard—not without some debate, however, if the *Proceedings* speak truly—by ordering ("requesting" is the New Jersey term)

the republication, *in extenso*, of what purported to be the Secretary's papers, as printed in *The Gazette*.

On the surface, all this seems to be fair to all concerned, and strictly honorable. It is proper, however, that the world should know—what a large portion of it does not yet know—that the Corresponding Secretary and The New Jersey Historical Society are almost synonymous terms; and that when "WILLIAM A. WHITEHEAD, *Corresponding Secretary*," shall cease to exist, the recording angel will speedily enter the adjournment, *sine die*, of "The New Jersey Historical Society." Indeed, every intelligent Jerseyman knows that, *in its literary relations*, the Corresponding Secretary carries the Society in his breeches pocket, as a plaything with which to amuse the fancies and to pander to the selfishness of that fag-end of feudalism, known as "The Proprietors of East-Jersey;" and the greater number of the solid men of the State, by steadily refusing to contribute to its means for doing mischief, even the annual pittance of two dollars, which the Society so imploringly solicits, proclaim aloud how little confidence *they* repose either in it or its Secretary, and how little respect is due, either to the one or the other, from any one who has any respect for himself.*

There is no doubt that the discomfited Secretary

* The statements contained in this paragraph, have been made on information voluntarily communicated to me by a townsman of Mr. Whitehead; and one of the most distinguished members of The New Jersey Historical Society.

appreciates what purports to be the recorded approval of the Society; but no soothsayer is required to foretell, that a professed historian who habitually disregards the evidence of the records of by-gone ages, when it fails to sustain his corrupt designs, and who boldly mutilates those records in order to fit them to his own inventions, can find very little benefit in the support of a Society, the record of whose official action is blurred with the evidence of an offence not less heinous than that from the effects of which that Secretary is now suffering.

As I have said, however, THE NEW JERSEY HISTORICAL SOCIETY has "requested" *what purports to be* a re-publication of its Secretary's official articles on "*The New-Jersey Boundary*," which originally appeared in *The [Yonkers] Gazette*; and the Secretary appears to have complied with that "request," so called, in the printed *Proceedings* to which reference has been made.

No one who is acquainted with either the Society or its Secretary, however, will suppose, for a moment, that, *on the subject under discussion*, either the one or the other can honestly be honest; and there will be no wonder, therefore, in any direction, when it is known that both continue to travel in the well-worn rut of Jersey duplicity and dishonesty.

How nearly the official reprint, in the pamphlet now before me, is a re-production of the two papers which the Secretary, *as such*, wrote for

The Gazette, and how much he has honored the Truth of History or preserved the integrity of his authorities, in this renewed official effort, will be seen from the following :

I. The volume is illustrated with a "*Map of the waters surrounding Staten Island, FROM THE U. S. COAST SURVEY SKETCH MAP OF 1861,*" on which prominently appear two dotted lines, one extending from the ocean, through the Narrows, to Bedloe's Island, marked, "*Line of Hudson's River and the Main Sea;*" the other extending from a point on the last mentioned line which is midway between Sandy Hook and Coney Island, through the middle of the Lower Bay, the Sound, and the Kill van Col, to the same line, at a point opposite to Yellow Hook, in New York Harbor, and marked "*Line conceded by New Jersey in 1833.*"

My knowledge of the proclivities of THE NEW JERSEY HISTORICAL SOCIETY and its Secretary, in their dealings with Maps of "the waters surrounding Staten Island" and its vicinity, led me to look with suspicion on this, purporting to have proceeded from Federal sources ; and I fancied that the same fingers which, in 1846, had mutilated the Map of VAN DER DONCK, for the promotion of New Jersey's cupidity,* had also left evidence of a similar manipulation of the Map

* Reference is made here to the omission from the copy of a section of the van der Donck Map, published by the NEW JERSEY HISTORICAL SOCIETY, in the first volume of its *Collections*, of that eminent Dutch historian's testimony that *the mouth of the Hudson is at Sandy Hook.*

I said that Sir William Jones had been falsified by the Secretary of The New Jersey Historical Society; and the Secretary, instead of joining issue with me and attempting to disprove the charge, has gravely raised a new issue, and lets the old one go by default.

I renew the charge, therefore, that The New Jersey Historical Society, through its Secretary, misrepresents Sir William Jones by making him say, in his "Decision," what he did not say, if we may believe the original, as published by Mr. Brodhead; and I invite that distinguished body to disprove the charge, if it can do so.

7. On page 145 of the Society's volume, the Secretary, also in a Note, staggers against my exposition of the shallowness of his pretensions concerning the right to Port-privileges of the city of Perth-Amboy; and he blindly assumes that those rights, had they ever existed, were simply general "governmental rights," granted to the Proprietors and surrendered by them, in 1702.

The Secretary knows, as well as I, the entire groundlessness of this argument. If Perth-Amboy ever possessed the rights, under the Crown, of a Port of Entry, neither the Proprietors of East Jersey nor the King, nor both combined, could have deprived her of that franchise; and he *knows*, also—and he would say so if he wore any other livery than that of "The "Proprietors of East Jersey"—that the reason that the Proprietors continued to pray for the privileges of a

Port, was the fact that THE KING HAD STEADILY REFUSED TO GRANT ANY SUCH PRIVILEGES, BOTH BEFORE AND AFTER THE PROPRIETORS SURRENDERED THEIR "PRETENDED" RIGHTS OF GOVERNMENT IN THE PROVINCE.

If the Secretary and the Society do not know the extent of "a governmental right" to control, or abridge, or annul, A FRANCHISE, duly granted, it would be well for their reputation if they would talk and write less on the subject.

8. The terms in which New Jersey has been referred to, both by General Cochrane and myself, appear to offend the Secretary and the Society; and they devote a long Note, on page 147, to a remonstrance on the subject.

It would have been well, one would have supposed, had they showed that New Jersey deserved more consideration before presenting a remonstrance on the subject; and an attempt should also have been made, at least, it seems to me, to remove from the records the accumulated evidence of her forced contributions from railway passengers, of the shelter afforded by her laws to those who were *unwilling* to pay their just debts in New York, of her legal discrimination, even at her country toll-gates, between the residents of New Jersey and those of New York, &c., to say nothing of her persistent endeavors, by hook or by crook, to filch from New York a portion of both her territory and her property.

If the Society and its Secretary are really as anxious to preserve the name of New Jersey from

merited disgrace as they seem to be, let them cease to mislead her, and show a desire, however small, to check her reckless career. *Let them first become honest themselves*; and then, holding up the example of their own reformation and new-found title to respectability, let them encourage their fellow-Jersey men, both financial refugees from New York and others, to follow in their repentant footsteps.

In the meanwhile, both the Secretary, who has so far forgotten his duty, and the Society, which has so far departed from the purposes of its foundation, as to sacrifice the Truth of History on the altar of a time-worn and corrupt Corporation, will continue to receive the justice to which they are so eminently entitled; and their mutilated Records and forged and mutilated Maps, their concealment of antagonistic Truths, and their invention of corroborative Falsehoods, will continue to be treated with that contempt from which not even the corporate name of a "Historical Society" can wholly shield them.

HENRY B. DAWSON.

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